

ILLINOIS POLLUTION CONTROL BOARD

February 7, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 72-328
)
 PEABODY COAL COMPANY (WILL SCARLET)
 MINE),)
)
 Respondent.)

Delbert Haschemeyer, Assistant Attorney General for the EPA
Daniel Hall, Attorney for Peabody Coal Company

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

A Complaint against Respondent Peabody was filed by the Environmental Protection Agency on August 7, 1972 alleging pollutional discharges from Peabody's Will Scarlet Mine located in Saline County, Illinois. The Complaint charges that, on seven specific dates and numerous prior and subsequent dates, Peabody operated the Will Scarlet Mine facilities in such manner as to violate Sections 12(a), (c) and (d) of the Environmental Protection Act, certain Sections of SWB-10 and SWB-14 and Chapters III and IV of the Pollution Control Board Rules and Regulations. The streams alleged to have been affected by the mine discharges were said to be an unnamed creek, Sugar Creek and the South Fork of the Saline River.

This action was consolidated for hearing with another enforcement action involving mine waste discharges in southern Illinois from property owned by Kenneth Jr. and Michael Martin, PCB 71-308. The parties involved in the consolidated cases presented a proposal for settlement of the two prosecution cases. This first proposal was rejected by the Board in our Opinion and Order dated May 24, 1973. We have now been presented with new Stipulations and Agreements for Settlement for each of the two cases separately. This Opinion and Order shall address the issues in the Peabody action separately from those involving the Martins.

As part of the Stipulation, the Agency submitted data in the form of group exhibits which indicates that pollutional discharges from the Will Scarlet Mine area did occur on the dates alleged. The discharges consisted mainly of acid water, iron and suspended

solids, which would lower the pH of the receiving streams, cause the water to be discolored and deposit objectionable material on the stream bed. Peabody evidence appears to confirm the occurrence of polluttional discharges but Peabody states that the discharges were caused by:

- a. Failure of routine pumping at pit #8
- b. Failure of an earthen dam
- c. Intermittent overflow from pit #11
- d. Seepage through a levee, and
- e. Overflow of impounded water from pit #10

We are told that all of these problems have been remedied except for the problems involving pit #8. Sampling indicates that the pumping program initiated to control the problems at pit #8 was inadequate. As part of the proposed settlement, Peabody is to submit an abatement program acceptable to the Agency for the abatement of polluttional discharges from the vicinity of pit #8.

The parties have agreed that the water quality of certain areas of the Saline River does not meet applicable State Water Quality Standards. It is further agreed that discharges from the active portions of the Will Scarlet Mine have no significant impact on said water quality of the Saline River, except for those discharges which led to this enforcement action and those discharges originating from a mine water treatment plant.

Under the proposal now submitted, Peabody will submit its proposed abatement program for pit #8 to the Agency within 30 days after our acceptance of this proposed settlement. If the Agency issues an operating permit covering the abatement program, that permit is to be deemed acceptance of the program by the Agency. Peabody acknowledges that it is obligated to comply with the Act and all applicable Rules and Regulations by other means, in the event the approved abatement program does not bring Peabody into compliance.

Peabody is to post a performance bond in an amount equal to the cost of the entire abatement program. While the proposed settlement specifies no exact amount for the bond, Petitioner's attorney, Daniel Hall, said the cost of the abatement program for pit #11 was running about \$70,000 per year and that detailed estimates on the other portions of the abatement program would be provided as soon as they are available (R. 42, October 10, 1973).

The proposed settlement calls for Peabody to participate in "other pollution abatement projects or projects presently under discussion" in lieu of payment of a monetary penalty. If, in the Agency's opinion, Peabody fails to satisfactorily participate in such negotiations, the Agency shall provide written notice to the

Board and Peabody of such failure. Within 30 days after receipt of the failure notice, Peabody agrees to pay a penalty of \$15,000.

While the Board is not told what other pollution abatement projects might be involved in this trade-off, we are aware of the possibility that such negotiations could involve Peabody No. 47 Mine, which is the subject of the Martin case. We are told that negotiations could involve numerous other abandoned mines in Illinois (R. 47, October 10, 1973). The parties indicate that flexibility in negotiations is one of the more advantageous features of the new proposed settlement.

We find this proposed settlement to be a vast improvement over the first proposed settlement, and one which we can accept, but nevertheless must state our interpretation of the trade-off or penalty provision to insure that there is no misunderstanding by any party.

It must be clearly understood that the \$15,000 penalty is not to be traded off for abatement work which Peabody is legally obligated to perform at any mine--abandoned or not. That amount of penalty is appropriate for the violations which we find to have occurred at the Will Scarlet Mine. We suspend payment of the \$15,000 penalty in return for an appropriate amount of pollution abatement to be performed by Peabody at "non-owned abandoned sites". (See EPA vs. Kienstra Concrete, PCB 72-72; EPA vs. Zoller Coal Company, PCB 72-258, and EPA vs. Peabody Coal, PCB 72-328, Interim Opinion of May 24, 1973). The penalty will not be forgiven just because Peabody performs an obligation it is already bound to perform under the law, for instance the abatement of pollution coming from point sources owned by Peabody.

The penalty, if paid, is for pollution done at the Will Scarlet Mine alone. The suspension of penalty will be for Peabody's abatement of pollution coming from non-owned abandoned mines for which Peabody has no legal obligation. When an abatement project has been selected by the parties we will require a report of the ownership of the real estate involved to be sure that there is no doubt regarding this provision. With this understanding the Board approves the Stipulation and Agreement filed by the Agency and Peabody in all respects.

ORDER

We find that Peabody Coal Company has violated the Act and Regulations as alleged in the Complaint. It is ordered that:

1. Peabody Coal Company shall comply with its pollution abatement program as described in paragraph 3 of the Fact Stipulation and the exhibits incorporated therein by reference. This abatement program includes:

- A. Continuing the treatment of intermittent drainage from pit #11.
 - B. Performing normal inspection and adequate maintenance of the retaining dam near Bulltown Bridge, the levee located near the mine garage, and the pumps controlling the water impounded in pit #10.
2. Within 30 days from the date of this Order, Respondent shall submit an abatement program acceptable to the Agency for the discharge from its mining area in or about the vicinity of pit #8.
 3. Respondent shall post a performance bond no later than March 15, 1974 in a form acceptable to the Agency in an amount equal to the cost of the abatement program to insure completion of the pollution abatement work described in Paragraphs 1 and 2 of this Order.
 4. Respondent shall submit quarterly reports to the Agency detailing the progress or lack of progress with the Compliance Program and the reasons for any lack of compliance.
 5. Within the 9 months following this Order, Respondent shall participate in negotiations involving other mine pollution abatement projects in Illinois in a manner satisfactory to the Agency and the Board. Upon written notice to the Pollution Control Board and Respondent by the Agency that Respondent has failed to satisfactorily participate in pollution abatement at non-owned point sources, or upon such finding by the Board, Respondent shall within 30 days pay a penalty of \$15,000. Penalty payment by certified check or money order shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706. Payment of the penalty shall apply solely to violations in this proceedings and shall not be attributable to any failure in negotiations involving mine discharge from property for which Peabody Coal is legally responsible.
 6. Within 30 days after reaching agreement on a pollution abatement project the parties shall notify the Board

regarding the details of the project, including ownership of the real estate and pollution sources involved and the identity of any person or company who created the pollution source or may be liable for allowing the pollution to occur. If no agreement is reached regarding a pollution abatement project within 9 months, the parties shall advise the Board of that fact and the \$15,000 penalty shall become due and payable.

Mr. Marder and Mr. Seaman dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 7th day of February, 1974 by a vote of 3 to 2.

Christan L. Moffett