

ILLINOIS POLLUTION CONTROL BOARD  
December 13, 1979

J. ROYDEN PEABODY, JR., D. IRVING )  
LONG and JANE PEABODY DURHAM, )  
 )  
Petitioners, )  
 )  
v. ) PCB 79-165  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

MR. JOHN P. MEYER AND MR. RICHARD M. DOGGETT, ATTORNEYS AT LAW,  
APPEARED ON BEHALF OF THE PETITIONERS.

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a petition for variance filed on August 17, 1979 by J. Royden Peabody, Jr., D. Irving Long and Jane Peabody Durham. Several citizen objections were filed. The Environmental Protection Agency (Agency) filed a recommendation on September 14, 1979. A hearing was held in Danville, Illinois on November 6, 1979.

Petitioner in this case was the Respondent in PCB 77-24. That case was settled by a stipulated agreement which was accepted by the Board on November 16, 1978 (32 PCB 71). In that proceeding Petitioner was found to have caused water quality violations in Grape Creek by runoff from an abandoned mining operation on agricultural land owned by Petitioner. Petitioner is now requesting a variance from the date of completion of the stipulated pollution abatement project. Two gob piles on Petitioner's land were to be graded, neutralized, covered and vegetated by December 1, 1979. Petitioner is now asking a one year delay to December 1, 1980 to provide further time to get government funding to help pay for the reclamation of the site.

The stipulated agreement states that the Petitioner-Respondent would apply for a grant under the Federal Mine Reclamation Act. However, the reclamation plan set out in the agreement is not contingent upon receiving the grant. Petitioner did apply for assistance from the Rural Abandoned Mine Program (RAMP). Petitioner's land was given a priority number of 3. In 1979 only priority numbers 1 and 2 received funding. Petitioner's application is still pending (R. 31). Petitioner has also applied for a change

to priority 2. If Petitioner receives assistance from RAMP it would cover the cost of eighty-five to ninety-five percent of the reclamation. Petitioner cannot receive reimbursement under the program for work already done.

In May, 1978 the work was estimated to cost \$43,000 (R. 33, 93). In the spring of 1980 because of inflation the cost is estimated to be approximately \$76,900 (R. 93, 101).

Petitioner has also applied for funds under a federal program administered by the Department of the Interior (R. 166, 170). In 1978 Petitioner attempted to obtain assistance from the Illinois Abandoned Mine Council; however, at that time Petitioner was ineligible (R. 171). Since then there has been a change in the law effective June 1, 1980. Because of this change Petitioner may be able to get assistance from the Illinois Abandoned Mine Council (R. 171, 172). Petitioner has no assurances that any program will provide funds for next year (R. 87).

Although Petitioner presented a good deal of evidence at the hearing, the facts remain essentially the same as at the time of the stipulated agreement. No additional hardship is claimed, other than inability to obtain funding. It is pointed out in the record that to complete the project (including the seeding) now would be futile. Winter weather would cause erosion and the process would have to be repeated in the spring (R. 35).

There were numerous citizens at the hearing to object to further delay in abating the pollution. One citizen stated at the end of the hearing that she and a number of others had no objection to a six month extension because of the winter weather (R. 189).

The stipulation provided that runoff from the gob piles contains acid, manganese, zinc, iron, sulfates, unnatural sludge, material which creates bottom deposits and unnatural color or turbidity and that these are in violation of water quality standards. Rules 203(a), 203(b) and 203(f) were found to be violated. Petitioner's expert, Dr. Edward H. Tyner, on the basis of single samples taken upstream and downstream from the gob piles, found the stream polluted in both areas (R. 132). Dr. Tyner noted that iron is the primary contribution coming from the gob piles (R. 132). Upstream iron was measured at 1.2 ppm and downstream at 61 ppm (R. 129). Petitioner's tests show pH 7.1 upstream and 6.4 downstream (R. 126). The downstream number is below the Board's Rule 203(b) standard of a range from 6.5 to 9.0. The Board notes that a single grab sample cannot be given much weight.

Petitioner has applied for funds but no actual steps have been taken to abate the pollution. The Board agrees that to attempt to vegetate cover material during the winter months would be futile. Erosion would result and the process would have to be repeated. This would be an arbitrary and unreasonable hardship at this time. The Board's interest is to have the site cleaned up effectively; therefore, the Board will grant Petitioner a variance to June 30, 1980. Petitioner has not shown sufficient hardship for a longer variance. Petitioner has no assurances of ever receiving government funding while the costs will continue to rise with inflation. Delay may only increase the difficulty of abatement.

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

ORDER

It is the Order of the Pollution Control Board that J. Royden Peabody, Jr., D. Irving Long and Jane Peabody Durham are granted a variance until June 30, 1980 from the completion date in the stipulated compliance plan in PCB 77-24 to correct violations of Chapter 3: Water Pollution Rules 203(a)--freedom from unnatural sludge or bottom deposits, floating debris, unnatural color or turbidity, 203(b)--pH and 203(f)--manganese, zinc, iron and sulfate.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13<sup>th</sup> day of December, 1979 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board