

- (3) Respondents by this Consent Order are not foreclosed from challenging the propriety of any future order entered by the Pollution Control Board.
- (4) The parties hereto shall submit to the Board within thirty days from the date hereof, their proposals for abatement and control of any polluttional discharges from the Burning Star Slope Mine. The Board will schedule such further hearings upon notice to the parties as shall be appropriate in the premises."

Notwithstanding the express directive to both parties set forth in the above order, nothing has been received to date from the Environmental Protection Agency relative to a proposal for abatement and control of polluttional discharges from the Burning Star Slope Mine. On March 17, 1971, this Board received a document captioned 'Petition for Variance', filed by Consolidation Coal Company, reciting the history of ownership of the property, the details of which are not necessary for this decision and order. After setting forth that the operation had been abandoned before the enactment of the Environmental Protection Act and the acquisition of title by Respondent, Consolidation Coal Company, of which Truax-Traer Coal Company is an operating division, the alleged Petition for Variance requests the entry of an Order, as follows:

"1. That the Environmental Protection Act of the State of Illinois does not apply to underground mining operations at Burning Star Mine which have been abandoned prior to the effective date of the Statute and on which no active mining operations have been conducted since the effective date of said Statute.

2. That the provisions of the Environmental Protection Act of the State of Illinois do not apply to underground mining operations conducted by predecessors in title which were abandoned by said predecessors in title prior to your Petitioner acquiring title to said property and upon which your Petitioner has conducted no mining operations since acquiring title.

3. That the Environmental Protection Agency ceases and desists from any further prosecution of Petitioner, Consolidation Coal Company, under the provisions of the Environmental Protection Act of the State of Illinois as a result of any discharge of water from the underground mining operations at Burning Star Mine."

It is obvious that the document filed by Petitioner, Consolidation Coal Company, is not a variance petition in any sense of the word. What petitioner seeks is, in effect, a declaratory judgement that the

Environmental Protection Act does not apply to Petitioner's operation. Section 35 through 38, inclusive, of the Environmental Protection Act, permit the granting of individual variances from the regulations promulgated pursuant thereto when the imposition of such requirement will result in an arbitrary or unreasonable hardship. Section 401 of the Rules of the Pollution Control Board provide as follows:

"Petition. (a) A variance proceeding shall be commenced by filing a petition for variance with the Agency and by filing ten copies of the petition with the Clerk of the Board. The petition shall contain the following:

(1) a concise statement of the facts upon which the variance is requested, including a description of the business or activity in question; the quantity and type of raw materials processed; an estimate of the quantity and type of contaminants discharged; a description of existing and proposed equipment for the control of discharges; and a time schedule for bringing the activity into compliance.

(2) a concise statement of why the petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, including a description of the costs that compliance would impose on the petitioner and others and of the injury that the grant of the variance would impose on the public; and

(3) a clear statement of the precise extent of the relief sought.

(b) The petition may be accompanied by such affidavits or other proof as the petitioner may submit in order to make it possible for the Board, if it so decides, to dispose of the matter without a hearing."

It is obvious that petitioner has failed to comply with the statutory and regulatory provisions for the filing of a petition for variance, and the petition is accordingly dismissed. We do accept the petition, however, as a response to the Board's Order stating the company's position as to its responsibility for future incidents. The failure of the Environmental Protection Agency to comply with the Order as originally entered, or to file a responsive pleading to the alleged variance petition, has only served to prolong the ultimate resolution of this matter.

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD:

1. That the petition for variance, be and the same is hereby dismissed for the reasons above set forth.
2. That the Environmental Protection Agency is directed to file, within 20 days from the date hereof, a full and detailed report of its proposals to achieve abatement of the pollutional discharges above-described, or, in the alternative, an amended enforcement action providing for the entry of a cease and desist order against Respondents, pursuant to either of which this Board will conduct further hearings as appropriate.

I, Regina E. Ryan, Clerk of the Board, certify that the Board has approved the above Opinion this 14th Day of June, 1971.


