

ILLINOIS POLLUTION CONTROL BOARD
January 19, 1989

CONSOLIDATION COAL COMPANY,)
)
Petitioner,)
)
v.) PCB 88-140
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MS. KATHERINE D. HODGE APPEARED ON BEHALF OF PETITIONER;

MR. JOHN J. BRESLIN APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a Petition for Review of NPDES Permit No. IL0038512 ("Permit") as reissued to Consolidation Coal Company ("Consolidation") by the Illinois Environmental Protection Agency ("Agency"); the Petition for Review was filed on September 1, 1988.

Hearing was held on December 20, 1988 in Pinckneyville, Illinois. At hearing the parties submitted a Stipulation and Agreement ("Stipulation"). The Stipulation, which was filed with the Board on December 23, 1988, frames the matter as it now stands. The parties now request that the Board concur with certain interpretations presented in the Stipulation, and thereafter to dismiss this matter.

The interpretations at issue concern requirements for monitoring of mine waste effluents. These requirements are found at 35 Ill. Adm. Code, Subtitle D: Mine Related Water Pollution, Part 406. Part 406 was substantially amended by the Board in 84-29¹.

As originally reissued, Permit No. IL0038512 required that Consolidation take and analyze, for each of 28 discharge points, three discharge samples per month (equivalent to nine per quarter), designated as "base flow" samples, plus at least three additional samples per quarter of discharges caused by precipitation events or snowmelt runoff (Permit, p. 2, 3). Initially, varying interpretations of this requirement were held by the parties (Stipulation, para. 4).

¹ In the Matter of: Proposed Amendments to Title 35, Subtitle D: Mine Related Water Pollution, Chapter I, Parts 402 and 406; Final Opinion and Order adopted June 25, 1987 (78 PCB 523-563).

The parties now agree that Part 406 requires the collection and analyses of precipitation event discharges, but not necessarily in addition to regular collection and analysis requirements (Stipulation, para. 5). The parties further agree and represent to the Board that the Agency has the authority to require, in a permit condition, that some of the required samples be of base flow discharges (Id.). Additionally, the parties further agree that Part 406 is consistent with a requirement of nine discharge samples per quarter per discharge point, with at least three of said samples being of precipitation event discharges, if possible (Id.).

A new draft permit containing these requirements, a copy of which was submitted at hearing (R. at 9), has been readied and the Agency is prepared to issue it to be effective on the date that the Board dismisses this matter (R. at 6). Specifically, the new draft permit restructures the monitoring requirements to read:

There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during a precipitation event.

December 23, 1988 Draft NPDES Permit, p. 2.

In support of their interpretations, the parties cite various portions of the Board's Opinion and Order in R84-29 and the Part 406 amendments adopted therein. Without repeating these citations, the Board notes that it concurs with the interpretations arrived at by the parties and finds them to be consistent with the Board's intent, as presented in the Board's Opinion in R84-29, and with Part 406 as amended therein.

Inasmuch as all issues are resolved, this matter will be dismissed.

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

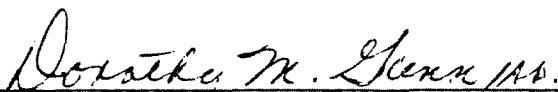
ORDER

The appeal of NPDES Permit No. IL0038512 brought by Consolidation Coal Company in PCB 88-140 is hereby dismissed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 $\frac{1}{2}$ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of JANUARY, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board