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State goes easy on coal mines

Mining permit renewed despite history of pollution violations

BY BRUCE RUSHTON



standards.

Regulators and the state are far apart when it comes to punishment, which the pollution control board has yet to decide. The state is asking for \$837,000 in fines. Environmentalists want \$64 million. Springfield Coal says that both amounts are too much, noting that the highest fine for a violation of the Clean Water Act in Illinois during the past 15 years was \$135,000.

The violations weren't ticky tack. Excess discharges of such dangerous substances as manganese have been as high as 30 times the allowable limit, and violations have continued since litigation began, according to Traci Barkley, water resources scientist for Prairie Rivers Network, and the state attorney general's office, which says that 65 violations occurred after the state sued.

"It should be simple," Barkley said. "It should be, according to our state rules and regulations, that if they are in violation of state and federal permits, they should not be able to get other permits. ... There are umpteen reasons why you don't issue a permit to someone who's been out of compliance since 2004."

State law, however, is not among the reasons, according to regulators.

"Without getting too much into the legalese, Illinois state law does not establish past noncompliance as a reason for denying a permit," said Andrew Mason, IEPA spokesman. "Just because they've had prior violations in the past, that's not reason under the law to deny them permits."

The IEPA says that concerns about a pattern of polluting have been addressed in the renewed permit by including a condition requiring the mine operator to adhere to good mining practices. The state also says that it will improve oversight and require swift corrections to future problems by conducting regular inspections.

But the state has never ridden close herd on the Industry mine, which had been operating with an expired permit since 2004. The state never took action to transfer the expired permit when the mine changed hands in 2007. A renewal application was filed before the permit expired nearly a decade ago, but the state didn't act on it until the decision to approve the renewal last month. In the meantime, the old permit was administratively extended by the state, even as pollution standards were continually violated. The IEPA, which issued a notice of violation to Springfield Coal in 2009, didn't refer the matter to the attorney general's office for enforcement until 2012, after the attorney general and environmentalists had already sued. And the attorney general didn't act until environmentalists forced the state's hand.

As required by law, environmentalists gave the company and the state a 60-day notice of intent to sue in 2010. The state filed suit within that 60-day window, according to Jessica Dexter, an attorney for the Environmental Law and Policy Center who is handling the litigation on behalf of environmentalists.

"This case happened because we started it," Dexter said. "This is the most violations I've seen in a (water pollution) permit. It's my position that if you want to do business in Illinois, you need to comply with the law. This mine has never come up with a compliance plan showing how they will meet the standards. We're not dealing with the usual circumstance."

The coal is gone, but a scar on the earth remains. Coal ash is being dumped on the site to replace the mined coal, and erosion poses a risk to nearby streams, according to mine critics. The state allowed a last-minute change to the permit renewal and approved the processing of coal at Industry from a proposed mine in nearby Littleton. Environmentalists say they never got a chance to comment.

The proposed Littleton mine is owned by the same people who own the Industry mine, albeit under a different company name. The state says it can't reject a permit application for the Littleton mine because the same operators have been unable or unwilling to meet pollution standards at the Industry mine. The state is also processing a pollution permit application for a proposed mine near North Canton, not far from Industry, which would be owned by the same people who own the Industry facility. Ownership records found by environmentalists show that the three companies, which all have the same address in Springfield according to corporate records held by the Illinois secretary of state's office, are owned by Michael Caldwell, Thomas Austin and Brian Veldhuizen.

"I don't see any other place in our regulatory system where this would be allowed, where someone who is a chronic violator is given yet another chance," Barkley said. "The logic

What do you get if you're facing millions of dollars in fines for water pollution over the course of a decade?

If you're the Springfield Coal Company, you get your permit renewed by the Illinois Environmental Protection Agency, much to the chagrin of environmentalists and residents who live near the company's strip mine five miles from the tiny town of Industry, about 70 miles northwest of the capital city, near Macomb.

Champaign-based Prairie Rivers Network is teaming with the Sierra Club and the Environmental Law and Policy Center in Chicago to appeal the IEPA's approval last month of a permit renewal for the mine that has a history of violations dating to 2004, when Freeman United owned the property.

Under Freeman United, regulators recorded 219 violations between 2004 and 2008; in 2008 and 2009, the state found 134 violations after the Springfield Coal Company acquired the property, according to the attorney general's office, which sued in a 2010 action that remains pending before the Illinois Pollution Control Board. Environmentalists, however, found 624 violations, nearly 300 more than the state discovered, and the board affirmed that number in a decision last November, finding that the mine has, indeed, repeatedly violated water pollution

escapes me.”

Residents near the proposed strip mines have much to lose, Barkley said.

“Their land is still in woods and farmland,” Barkley said. “They have intact communities. It’s heartbreaking, really, to think of folks who are facing this and not being able to count on state regulators who are supposed to be protecting them.”

Closer to Springfield, Lisa Salinas, who owns land near a Carlinville area mine, knows the feeling.

For years, Salinas has battled the mine owned by a subsidiary of a company owned by Chris Cline, a transplanted Appalachian coal magnate who has showered Illinois politicians with more than \$1.25 million in campaign contributions since 2010. Of particular concern is groundwater contamination, but regulators in early 2012 dismissed Salinas in intra-agency emails when she asked the location of monitoring wells where pollution had been detected.

“She’s a nut,” IEPA project manager Todd Gross wrote in an email to a fellow regulator on Jan. 13, 2012. “Lisa is just a pill.”

Eleven months later, the IEPA sent a letter to the mining company saying that the agency was considering legal action because the company hadn’t done enough to resolve pollution problems. More than six months later, the IEPA still hasn’t sent the case to the attorney general’s office for action.

Mason, the IEPA spokesman, said that Gross’ characterizations of Salinas were “inappropriate” and regretted by the agency.

“However, his comments have not affected and will not affect the work the agency continues to do in relation to protecting the environment around the mine,” Mason wrote in an email.

Mason said that the IEPA has informed both the mining company and the attorney general’s office that alleged violations of pollution standards will be referred to the attorney general’s office for enforcement “as soon as possible.”

Salinas, who is a party to an appeal of a mining permit granted by the state Department of Natural Resources, said that she learned that regulators considered her a nut after obtaining copies of emails via discovery as part of ongoing litigation.

“I find it highly defamatory,” Salinas said. “As a private citizen, the lengths I’ve had to go to to call them out for their inaction – to have them use that crude of language to discredit me is disgusting.”

Barkley has nothing but praise for Salinas.

“I don’t think she’s a nut, I think she knows what’s going on,” Barkley said. “She is probably a real thorn in their side. She is exactly what we need more of – she’s someone who knows her rights.”

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