

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PRAIRIE RIVERS NETWORK,)
 by and for its members,)
 SIERRA CLUB, ILLINOIS)
 CHAPTER, by and for its members)
)
)
 Complainant,)
)
 v.)
)
 FREEMAN UNITED COAL)
 MINING CO., L.L.C., and)
 SPRINGFIELD COAL CO., L.L.C.)
)
 Respondents.)

PCB 2010-061
(Enforcement-Water)

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on July 1, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, **INTERVENORS' OPPOSITION TO SPRINGFIELD COAL CO., LLC'S APPLICATION FOR CONFIDENTIAL AND NON-DISCLOSABLE INFORMATION DESIGNATION, SEAL, AND PROTECTIVE ORDER**, a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,



Jessica Dexter
 Staff Attorney
 Environmental Law and Policy Center
 35 East Wacker Drive, Ste. 1600
 Chicago, IL 60601
 312-795-3747

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PRAIRIE RIVERS NETWORK,)
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**INTERVENORS' OPPOSITION TO SPRINGFIELD COAL CO., LLC'S APPLICATION
 FOR CONFIDENTIAL AND NON-DISCLOSABLE INFORMATION DESIGNATION,
 SEAL, AND PROTECTIVE ORDER**

Intervenors Prairie Rivers Network and Sierra Club, Illinois Chapter ("Environmental Groups"), by and for their members, hereby oppose Respondent Springfield Coal Co., LLC's Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order.

On June 24, 2013, Springfield notified Environmental Groups, through counsel, that Springfield had filed an application for confidential and non-disclosable information designation, seal, and protective order regarding Springfield's consolidated financial documents for fiscal years 2007 through 2012 (the "Springfield Coal Articles") and income statements of the Industry Mine for fiscal years 2007 through 2012 (the "Industry Mine Articles").

For the reasons below, Intervenors, Prairie Rivers Network and Sierra Club, respectfully request the Pollution Control Board ("Board") to deny Respondent's Application for

Confidential and Non-Disclosable Information, Designation, Seal, and Protective Order (“Application”).

Under the Board’s rules, “all relevant information and information calculated to lead to relevant information is discoverable.” 35 Ill. Adm. Code 101.161(a). The income statements and financial documents Springfield seeks to protect are relevant at least to the Board’s consideration of economic benefit in determining penalties for Springfield’s NPDES violations. 415 ILCS 5/42(h)(3).

While the Hearing Officer may enter a protective order to “deny, limit, condition or regulate discovery,” the Board’s rules also state that such an action may only be taken “to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure.” 35 Ill. Adm. Code 101.161(d). In its Application, Springfield asserts that the Articles it seeks to protect from public disclosure constitute “non-disclosable materials” because the Articles are “confidential data submitted by any person under the Act.” 35 Ill. Adm. Code 101.202. Springfield attempts to support this assertion by noting that the Articles in question contain “confidential proprietary information such as profits and losses, operating statements, and other highly sensitive business information of the Industry Mine and of Springfield Coal.” Springfield Application at ¶ 7(a). However, nowhere in its Application does Springfield give any evidence to support its assumption that such financial information inherently constitutes “confidential data” within the meaning of the Board’s regulations.

The Board has refused to issue protective orders over this very category of discoverable information in many past enforcement actions. *See, e.g. People of the State of Illinois v. ESG Watts, Inc.*, PCB 96-107 (denying Respondent’s motion for a protective order and maintaining

open hearing for testimony on corporation's income and earnings data); *Illinois Environmental Protection Agency v. Cargill, Inc.*, PCB 78-41 (extending protective order to certain discovery and hearing processes, but expressly excluding corporation's profit and loss statements, dividends, and taxes from protection). Springfield's Application attempts to advance the idea that the Board should automatically include a company's financial information within the meaning of "confidential data." However, the Board has determined that income and earnings data do not automatically constitute "confidential data."

Springfield has also failed to articulate any reason *why* the Board should grant Springfield's application for non-disclosure. The Board's rules state that an application for non-disclosure must contain "a concise statement of the reasons for requesting non-disclosure." 35 Ill. Adm. Code 130.404(e)(a). Nowhere in its Application does Springfield make any showing that public disclosure of the Articles would harm or adversely affect Springfield's business or proprietary interests.

The State and the Board have both asserted a preference for public accountability and that information be "open for reasonable public inspection." 415 ILCS 5/7(a) and 35 Ill. Adm. Code 130.100(a). Environmental Groups likewise agree with the Attorney General's position that Springfield's request to exclude outside parties from viewing relevant information is contrary to the State's public policy regarding governmental transparency, freedom of information, and open meetings of state agencies. When a corporation asserts that the Board should protect information as "confidential data" without showing exactly how that information is confidential within the meaning of the rule and how its disclosure would adversely affect the corporation's business interests, the Board has refused to close that information to public inspection. *Citizens Utilities Company of Illinois v. Illinois Environmental Protection Agency*, PCB 88-151 (Order denying

corporation's request for non-disclosure of information because the corporation "fail[ed] to claim with any particularity that would justify non-disclosure...exactly how its disclosure would adversely affect its business interests.").

For these reasons, Intervenors Prairie Rivers Network and Sierra Club, respectfully request the Pollution Control Board ("Board") to deny Respondent's Application for Confidential and Non-Disclosable Information, Designation, Seal, and Protective Order ("Application").

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal flourish extending to the right.

Jessica Dexter
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Chicago, IL 60601
312-795-3747

*Attorney for Sierra Club and Prairie Rivers
Network*

CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that I have filed the attached **OPPOSITION TO SPRINGFIELD COAL CO., LLC'S APPLICATION FOR CONFIDENTIAL AND NON-DISCLOSABLE INFORMATION DESIGNATION, SEAL, AND PROTECTIVE ORDER** in PCB 2010-061 upon the below service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on July 1, 2013

Respectfully submitted,



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