

ILLINOIS POLLUTION CONTROL BOARD  
April 19, 2001

PRAIRIE RIVERS NETWORK, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 01-112  
 ) (Permit Appeal – NPDES, Third Party)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY and BLACK )  
 BEAUTY COAL COMPANY, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by E.Z. Kezelis):

Prairie Rivers Network initiated this action on January 30, 2001, by appealing a decision of the Illinois Environmental Protection Agency (Agency) to issue a National Pollution Discharge Elimination System (NPDES) permit pursuant to Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (1998)). The NPDES permit had been issued to Black Beauty Coal Company (Black Beauty) to operate a new underground coal mine approximately two and one-half miles south of Georgetown, Illinois in Vermilion County. Pursuant to the Act, the named respondents are the Agency and Black Beauty.

On March 5, 2001, Vermilion Coal Company (Vermilion) filed a motion to intervene in the proceeding. On March 16, 2001, Vermilion filed a motion seeking a hearing on its petition. On April 5, 2001, the Board directed Vermilion to submit additional information within seven days to support its petition for leave to intervene. Vermilion filed a supplemental petition on April 11, 2001.<sup>1</sup> For the reasons stated below, the Board denies Vermilion's petition to intervene.

PETITION TO INTERVENE

Vermilion alleges that it owns coal in Vermilion County, and that in 1994, it entered into a lease granting the right to mine the coal for a twenty-year period to the entity now known as Black Beauty. Supp. Pet. at 1. Vermilion also admits that it does not own the surface at any of the locations proposed to be mined by Black Beauty. *Id.* at 2. It claims, nonetheless, that it will suffer "substantial and irreversible damage" by a reversal of the Agency's decision to issue the NPDES permit that is the subject of this action. *Id.*

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<sup>1</sup> Vermilion's supplemental petition for leave to intervene, filed on April 11, 2001, will be referred to as "Supp. Pet. at \_\_\_\_."

INTERVENTION UNDER THE BOARD'S PROCEDURAL RULES  
IS DISCRETIONARY

Section 101.402(d) of the Board's procedural rules provides that:

Subject to subsection (b) of this Section, the Board may permit any person to intervene in any adjudicatory proceeding if:

- 1) The person has a conditional statutory right to intervene in the proceeding;
- 2) The person may be materially prejudiced absent intervention; or
- 3) The person is so situated that the person may be adversely affected by a final Board order. 35 Ill. Adm. Code 101.402(d).

Subsection 101.402(b) of the Board's procedural rules provides that, "[i]n determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding." 35 Ill. Adm. Code 101.402(b).

As is reflected above, the Board's decision to grant or deny intervention is discretionary. In this case, we believe intervention should not be granted. The fact that it was Vermilion from whom Black Beauty obtained the coal mining interests some years ago is not particularly persuasive, given that the instant proceeding before the Board instead revolves around the NPDES permit granted to the lessee.

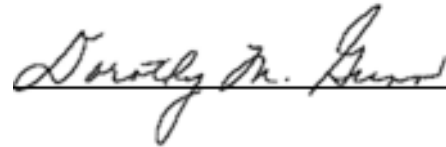
Although the Board declines to grant Vermilion's petition to intervene, the Board notes that Vermilion may still participate in the hearing of this action in accordance with Section 101.628 of our procedural rules. When time, facilities, and concerns for a clear and concise record allow, the hearing officer may permit participants to make oral or written statements, provided that they are under oath and are subject to cross-examination. 35 Ill. Adm. Code 101.628(a), (b). Vermilion may participate through public comments. Vermilion may also file *amicus curiae* briefs, permission for which is hereby granted pursuant to Section 101.110(c).

Finally, the Board recognizes that Vermilion requested a hearing on its petition to intervene. Because the Board gave Vermilion an opportunity to supplement its original petition, a hearing concerning intervention is not necessary. Accordingly, the Board denies Vermilion's motion for a hearing.

IT IS SO ORDERED.

Board Members S.T. Lawton, Jr. and N.J. Melas dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of April 2001 by a vote of 4-2.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board