

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.)

DISSENTING OPINION (by S.T. Lawton, Jr. and N.J. Melas):

We respectfully dissent from the Board’s order issued today in this matter. We believe that the Board abused its discretion by not permitting Vermilion Coal Company (VCC) to intervene in this matter. Indeed, we find it difficult to conceive of a factual situation that more clearly conforms to the regulatory predicate that the purported intervenor “may be adversely affected by a final Board order.” 35 Ill. Adm. Code 101.402(d)(3).

VCC alleges in its March 5, 2001 motion to intervene that it owns the coal that Black Beauty Coal Company (BBCC) seeks to mine pursuant to the National Pollutant Discharge Elimination System (NPDES) permit at issue in this matter. VCC argues that its ownership of the coal creates a substantial economic interest in the status of the NPDES permit. VCC Mot. at 1.¹ VCC states a basis for an allowance that is consistent with the Environmental Protection Act (Act) and the Board’s regulations.

VCC filed a supplemental petition to intervene in this matter on April 11, 2001,² in response to the Board order on April 5, 2001, requesting more information on the issue. VCC included in the supplemental petition a copy of a title insurance commitment for the coal to be mined by BBCC in this matter, the lease of its coal interests to the Catlin Coal Company (which was transferred to BBCC), and an affidavit by Frederick Keady, president of VCC. VCC alleges in the April 11, 2000 petition that the coal referenced in the title insurance commitment has a value upwards of \$30 million if it is mined, and no value if it is not mined. Supp. Pet. at 1. Keady, in his affidavit, reaffirms that VCC has a \$ 30 million interest in the coal, and alleges that VCC and its affiliates invested over \$20 million to acquire, preserve, and maintain its coal rights in Vermilion County, Illinois. Supp. Pet. Exh. C. VCC alleges in the supplemental petition that

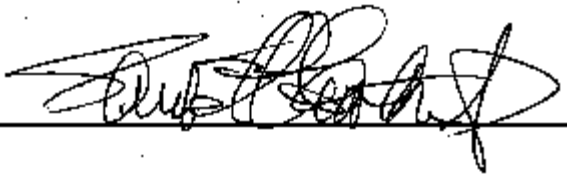
¹ VCC filed a motion to intervene with the Board on March 5, 2001, which will be referred to as “VCC Mot. at ____.”

² The VCC supplemental petition for leave to intervene, filed on April 11, 2001, will be referred to as “Supp. Pet. at ____.”

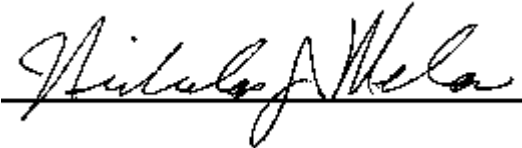
it “will suffer substantial and irreversible damage by a reversal of the [Agency’s] decision to issue the NPDES permit that is the subject matter of these proceedings.” Supp. Pet. at 2.

VCC satisfied the general requirements of intervention, pursuant to Section 101.402(d) of the Board’s procedural rules. See 35 Ill. Adm. Code 101.402(d). The Board has the discretion to allow VCC to intervene in this matter because it provided information, which demonstrates that it meets the third factor of the regulation, in that VCC may be adversely affected by a final Board order. See 35 Ill. Adm. Code 101.402(d)(3). VCC argues in its motion that its alleged ownership interest in the coal, which BBCC would mine in accordance with the NPDES permit in this matter, may be adversely affected by the final Board order. Since the motion by VCC to intervene in this proceeding is timely, and meets the requirements under 35 Ill. Adm. Code 101.402(d), the Board should have granted the motion by VCC to intervene in this proceeding.

For these reasons we respectfully dissent.

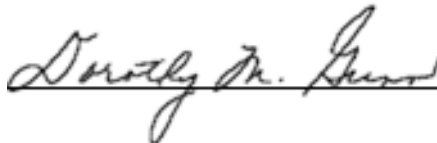
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Samuel T. Lawton, Jr.
Board Member

A handwritten signature in black ink, appearing to read "Nicholas J. Melas", written over a horizontal line.

Nicholas J. Melas
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 20th day of April 2001.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board