

ILLINOIS POLLUTION CONTROL BOARD
March 1, 2001

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

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On February 15, 2001, Frederick D. Keady, President of Vermilion Coal Company (VCC), filed a letter with the Board. The letter requested that VCC be allowed to intervene as a party and that the Board dismiss the January 30, 2001 petition by the Prairie Rivers Network (PRN). The petition by PRN contests the issuance of a National Pollutant Discharge Elimination System (NPDES) permit by the Illinois Environmental Protection Agency (Agency) to Black Beauty Coal Company (BBCC) pursuant to Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (1998)). Petitioner filed a response to the VCC letter on February 26, 2001. Respondent, BBCC, also filed a motion requesting that W.C. Blanton and Ranelle Leier of the Minnesota law firm, Oppenheimer Wolff & Donnelly LLP, be permitted to appear *pro hac vice* before the Board in this case.

BBCC MOTION TO APPEAR PRO HAC VICE

The Board will briefly address BBCC's February 26, 2001 motion to appear *pro hac vice* before discussing the letter by the president of VCC in this matter.

The Board grants Blanton and Leier leave to appear before the Board as counsel for BBCC in this case. Section 101.400(a)(3) of the Board's procedural rules states that "[a]ttorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear *pro hac vice* on a particular matter on a motion filed with the Board." 35 Ill. Adm. Code 101.400(a)(3).

BBCC's motion alleges that Blanton is a partner with Oppenheimer Wolff & Donnelly LLP of Minneapolis, Minnesota, who is licensed to practice law in both Minnesota and Indiana. Blanton is allegedly in good standing with the bar associations of both states. BBCC's motion also alleges that Leier is an associate with Oppenheimer Wolff & Donnelly LLP, who is licensed to practice law and in good standing in the State of Minnesota.

VCC MOTION TO DISMISS

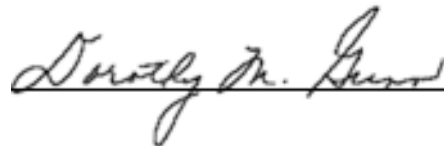
The Board strikes the February 15, 2001 letter¹ by Frederick D. Keady, President and Chief Executive of VCC, as improperly filed because: (1) the Board's procedural rules do not permit Keady, a non-attorney, to represent VCC in this matter (35 Ill. Adm. Code 101.400(a)(2)); (2) neither Keady nor VCC is properly a party before the Board in this case as specified by the Act and Board regulations (415 ILCS 5/40(e) (1998); 35 Ill. Adm. Code 101.110(b), 101.402, 105.202, 105.204(b)); and (3) Keady did not provide proof of service of the letter upon the parties to the proceeding, as required by Section 101.304(b) of the Board's procedural rules (35 Ill. Adm. Code 101.304(b)). Keady alleges that VCC owns the coal and mineral lands that BBCC leases to operate the mine that is the subject of the permit appeal. Letter at 1. The letter does not assert that VCC is a parent company of, or otherwise legally connected to BBCC.

Keady, as a non-attorney, cannot file a motion on behalf of VCC. The Board's procedural rules state that, "[w]hen appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law." 35 Ill. Adm. Code 101.400(a)(2). Section 1 of the Attorney Act prohibits persons from acting as an attorney without first obtaining a license to do so. 705 ILCS 205/1 (1998); Graf v. Valiquet, Inc. (April 15, 1999), PCB 99-125, slip op. at 3. Since Keady is not an attorney, he cannot represent VCC in this matter, and the Board cannot consider the letter filed by Keady as a pleading by VCC. The letter is accordingly stricken from the record.

In so ruling, the Board notes that it makes no determination on the merits of the facts or assertions contained in the February 15, 2001 letter by Keady. Keady individually, or VCC by an attorney, may participate in this proceeding in the manner specified by the Act and the Board's rules.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of March 2001 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The letter that Frederick D. Keady, president of VCC, filed with the Board on February 15, 2001, will be referred to as "Letter at ____."