ILLINOIS POLLUTION CONTROL BOARD November 21, 2002

| PEOPLE OF THE STATE OF ILLINOIS, |) | |
|----------------------------------|---|-----------------------|
| Complainant, |) | |
| v. |) | PCB 99-134 |
| |) | (Enforcement – Water) |
| PEABODY COAL COMPANY, a Delaware |) | |
| corporation, |) | |
| |) | |
| Respondent. |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by N.J. Melas):

On October 24, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion for reconsideration of the Board's October 3, 2002 order (Mot. for Rec.), a motion for leave to amend the second amended complaint (Mot. for Leave), and a third amended complaint (Fourth Comp.) against Peabody Coal Company (Peabody). The Board's orders of June 20 and August 22 ordered the People to remove all citations to Section 302.208 of the Board regulations. In an amended complaint filed on September 16, 2002 (Third Comp.), the People removed one citation to that section, yet six citations (two incorporated by reference) to that section remained. On October 3, 2002, the Board ordered the People again to remove citations to Section 302.208. The Board did not accept the complainant's amended complaint, and ordered the People to file another amended complaint removing allegations of a violation of Section 302.208.

Pursuant to the Board's procedural rules, motions for reconsideration must be filed within 35 days of adoption of a final Board order. 35 Ill. Adm. Code 101.520(a). The People timely filed their motion for reconsideration on October 24, 2002. Peabody filed an objection to this motion and the People's motion for leave to amend on November 7, 2002 (PCC's Resp.). For the reasons set forth below, the Board denies the People's motion for reconsideration, grants the People's motion for leave to amend, and accepts the People's October 24, 2002 amended complaint.

MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT

The People ask for leave to amend their second amended complaint in order to more specifically allege violations in counts II and III. These revisions clearly allege the applicable regulations violated at the time of discharge of various pollutants at the Eagle No. 2 mine site. For the reasons below, the Board grants the People's motion for leave to amend the second amended complaint and accepts the People's third amended complaint filed October 24, 2002.

¹ See 35 Ill. Adm. Code 302.208 (1982), the Board's applicable water quality standard for iron, effective June 22, 1982 through July 9, 1990.

Specifically, in count II, the People amend the chart of exceeded water quality standards in paragraph 27 to indicate that Rule 203(f) applies to discharges of iron and Rule 204(b) applies to the other discharges of inorganic compounds for violations that occurred between May 17, 1979 to June 22, 1982. Additionally, the People indicate that Section 302.208 (1982) applies to discharges of iron, and Section 302.304 (1982) applies to the other discharges of inorganic compounds for violations that occurred between June 22, 1982 and July 9, 1990.

In count III, the above amendments made to paragraph 27 of count II are incorporated by reference as paragraphs 16-28 of count III. Additionally, the People amend paragraphs 40-42, 44, and 45 to clearly reflect the changes made to the chart of exceeded water quality standards.

The changes the People made to their second amended complaint clearly revise the allegations found in counts II and III to adequately specify the dates, location, and strength of discharges alleged to constitute violations of the Act and regulations as required by the Board. Most significantly, the People cite to Section 302.208 for the first time as the regulation exceeded by the discharge of iron that occurred in 1982. *See* Fourth Comp. at 32. Because of this change and other clarifications made in count III of the amended complaint, the Board grants the People's motion for leave to amend and accepts the People's third amended complaint.

For the purposes of deadlines to file an answer or responsive motion, the Board deems the respondent to have received the amended complaint as of the date of this order. Pursuant to a hearing officer order dated October 21, 2002, the respondent must file its answer to the amended complaint within 30 days of the date of this order.

MOTION FOR RECONSIDERATION

The People ask the Board to reconsider its October 3, 2002 order to strike any citations to Section 302.208 from the People's September 16, 2002 amended complaint. Because the Board grants the People's motion for leave to amend their second amended complaint and accepts the People's third amended complaint filed October 24 2002, including properly alleged violations of Section 302.208, the Board denies this motion as moot.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2002, by a vote of 6-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board

Dorotly Mr. Gund