## ILLINOIS POLLUTION CONTROL BOARD October 17, 1972

ENVIRONMENTA	L PROTECTION AGENCY,	)		
	Complainant,	)		
V •		)	PCB	72-328
PEABODY COAL	COMPANY,	)		
	Respondent.	)		

OPINION AND ORDER ON APPLICATION FOR NON-DISCLOSURE (by Mr. Parker):

Respondent, Peabody Coal Company, has filed an Application for Non-Disclosure of certain data contained in Exhibits B and E appended to an affidavit of Daniel L. Hall, Respondent's Assistant Secretary, filed in support of Respondent's motion for continuance. The Application for Non-Disclosure contends that the data in Exhibits B and E is "confidential" within the meaning of that term as used in our Procedural Rule 107 (b) (4).

According to the Application, Exhibit B, which is an aquatic ecology survey prepared under the auspices of Southern Illinois University, is involved in a separate civil litigation, and "should be withheld until disposition of that matter". Exhibit E, a group of documents and charts entitled "Estimated Reclamation and Pollution Abatement Costs at Will Scarlet", is said to be an internal planning estimate having great competitive value to Respondent in its business.

We have not been given adequate information by the Respondent to permit us to decide whether our Procedural Rule 107 (b) (4) applies. Petitioner's attention is directed to the detailed requirements of our Procedural Rule 107, which have not been followed here, and to recent Board decisions interpreting this Rule (see Olin Corp. v. EPA, PCB 72-253, decisions dated August 10, 1972 and September 6, 1972, EPA v. Mystik Tape, PCB 72-180, decision dated September 6, 1972, and EPA v. Benj. Harris and Company, PCB 72-49, decision dated September 6, 1972). For example, Respondent must show that the "confidential" statutory exception exists in this instance, including verified factual showings as to how and the extent to which the material has been maintained as confidential. If

anything less than the entirety of Exhibits B and E is believed to be "confidential", Respondent must identify the assertedly "confidential" portions of these documents.

The Application for Non-Disclosure is denied for failure to conform to the requirements of Rule 107, without prejudice to Petitioner's later submission of an amended application conforming to the requirements of our Procedural Rules and the Environmental Protection Act.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order on Application for Non-Disclosure was adopted on the // day of retrieve, 1972, by a vote of \_\_\_\_\_.

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