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JUN 4 2003

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

June 4, 2003

Via Federal Express Mail

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: **People v. Peabody Coal Company**
PCB No. 99-134

Dear Clerk Gunn:

Enclosed for filing please find the original and five copies of a NOTICE OF FILING and COMPLAINANT'S MOTION FOR PROTECTIVE ORDER in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PEABODY COAL COMPANY,)
 a Delaware corporation,)
)
 Respondent.)

PCB NO. 99-134
(Enforcement)

NOTICE OF FILING

To: David R. Joest
 Peabody Coal Company
 1951 Barrett Court
 P.O. Box 1990
 Henderson, KY 42420-1990

Stephen F. Hedinger
 Attorney at Law
 2601 South Fifth Street
 Springfield, IL 62703


W. C. Blanton
 Blackwell Sanders Peper Martin LLP
 2300 Main Street, Suite 1000
 Kansas City, MO 64108

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, **COMPLAINANT'S MOTION FOR PROTECTIVE ORDER.**

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
 LISA MADIGAN
 Attorney General of the
 State of Illinois

MATTHEW J. DUNN, Chief
 Environmental Enforcement/Asbestos
 Litigation Division

BY: 
 JANE E. McBRIDE
 Assistant Attorney General
 Environmental Bureau

500 South Second Street
 Springfield, Illinois 62706
 217/782-9031
 Dated: June 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on June 4, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled **COMPLAINANT'S MOTION FOR PROTECTIVE ORDER**

To: David R. Joest
Peabody Coal Company
1951 Barrett Court
P.O. Box 1990
Henderson, KY 42420-1990

Stephen F. Hedinger
Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703
(Also via facsimile No. 523-4366
without Exhibits)

W. C. Blanton
Blackwell Sanders Peper Martin LLP
2300 Main Street, Suite 1000
Kansas City, MO 64108
(Also via facsimile No. (816) 983-9151 without Exhibits)

and the original and five copies by Federal Express Mail of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601
(Also via facsimile No. (312) 814-3669 without Exhibits)

A copy was also sent by Federal Express Mail

To: Brad Halloran
Hearing Officer
Pollution Control Board
James R. Thompson Center, Ste 11-500
100 West Randolph
Chicago, IL 60601
(Also via facsimile No. (312) 814-3669 without Exhibits)


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

**PEABODY COAL COMPANY, a Delaware
corporation,**

Respondent.

**PCB NO. 99-134
(Enforcement)**

COMPLAINANT'S MOTION FOR PROTECTIVE ORDER

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully moves the Hearing Officer for the issuance of a Protective Order regarding the additional written discovery requests propounded by the Respondent, and states as follows:

1. Section 101.616 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.616, provides generally that all discovery disputes will be handled by the assigned hearing officer. In particular, Section 101.616(b) provides that, if the parties cannot agree on the scope of discovery, the hearing officer has the authority to deny requests for discovery. Section 101.616(d) provides that the "hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding. . . ."

This is the relief sought by the Complainant.

2. As background, Peabody propounded its First Request for Production of Documents to the Complainant on July 28, 1999. This was a very broad request for documents from the files of the Illinois Environmental Protection Agency, the Illinois Department of Natural Resources, and the Illinois Department of Public Health. Respondent's First Set of

Interrogatories was propounded upon the Complainant on November 4, 1999, and included 45 separate interrogatories. Respondent's Second Request for Production of Documents was propounded upon Complainant on November 5, 1999, and included additional broad requests for documents from the Illinois EPA and the Illinois DNR as well as the files of the Illinois State Geological Survey and the Illinois State Water Survey. Respondent propounded its Second Set of Interrogatories and Third Request for Production of Documents on March 15, 2000. The additional interrogatories requested disclosure of opinion and fact witnesses. Said disclosure was completed by Complainant on May 23, 2003, pursuant to the discovery schedule that has been established by the Hearing Officer in this matter.

3. On May 27, 2003, the Complainant was served with additional written discovery requests, identified as Peabody's Third Set of Interrogatories through Seventh Request for Production of Documents; these requests are attached hereto as Exhibit A. The Respondent had already propounded 47 interrogatories. The recently received sets of interrogatories consist of a third set of 12 interrogatories, a fourth set of 30 interrogatories, a fifth set of 17 interrogatories, and a sixth set of 15 interrogatories. Further, also as stated above, the requests to produce propounded prior to the most recent requests were very broad requests concerning the files of five State agencies. The most recently received requests number as follows: a fourth set of 21 individual requests for production, a fifth set of 57 individual requests for production, a sixth set of 26 individual requests, and a seventh set of 24 individual requests. Many of the requests and interrogatories contained within the third through seventh requests recently propounded are duplicative of prior requests. The recent disclosure by the Complainant concerning witnesses and the opinions and conclusions of controlled experts are responsive to all the formerly outstanding requests and many of the some of the recently propounded requests.

4. The Board's Procedural Rules govern the conduct of discovery. Moreover, Section 101.100(b) indicates that "the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent." In pertinent part, Section 101.614 provides that the "hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, or harassment. . . ." Section 101.620(a) explicitly limits the number of interrogatories: "Unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party. . . ."

5. The Complainant objects on several grounds. First, the Respondent never sought leave from the Hearing Officer to propound the additional interrogatories, which vastly exceed the limit of 30. It was incumbent upon the Respondent to justify these additional interrogatories. Peabody's failure to do so does not shift the burden to the People to object to each interrogatory as would otherwise be generally required by Section 101.620(b) and (c). The Respondent also failed to comply with Illinois Supreme Court Rule 201(k) prior to serving these additional written discovery requests; this would have been necessary where the Respondent may have believed that the Complainant's previous responses were somehow inadequate. Secondly, the Complainant reasonably believes that any effort to address these additional interrogatories with responses and objections would result in undue delay, undue expense, or harassment. Lastly, as clearly allowed by Section 101.616(d), the People seek a protective order to "deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding. . . ."

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully requests that the Hearing Officer issue a Protective Order to deny or strike the additional written discovery requests propounded by the Respondent.

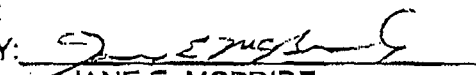
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:


JANE E. MCBRIDE
Environmental Bureau
Assistant Attorney General

Of Counsel:
THOMAS DAVIS
500 South Second Street
Springfield, Illinois 62706
Dated: June 4, 2003