

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 17 2003

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

PCB 99-134

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

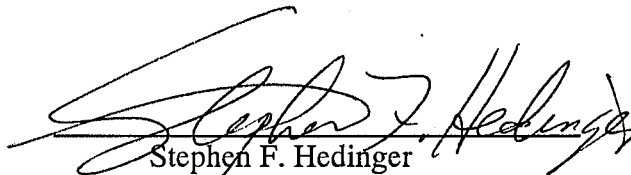
To: Jane E. McBride (via fax & U.S. mail)  
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Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

The undersigned certifies that an original and four copies of PCC's Withdrawal Of Interrogatories, PCC's Brief In Opposition To State's Motion For Protective Order, Affidavit Of W.C. Blanton Relating To State's Motion For Protective Order, and Affidavit Of Stephen F. Hedinger Relating To State's Motion For Protective Order, were served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the above-identified individuals via fax and/or U.S. mail by enclosing the same in envelopes properly addressed, with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mail box, on the 12~~th~~ day of June, 2003.

  
Stephen F. Hedinger

Hedinger Law Office  
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

PCC'S WITHDRAWAL OF INTERROGATORIES

Respondent, Peabody Coal Company ("PCC"), hereby notifies the Board and Complainant, People of the State of Illinois ("State"), that it hereby withdraws its interrogatories set forth in four sets of interrogatories served upon the State on May 23, 2003 ("PCC Interrogatories").<sup>1</sup> However, by doing so, PCC does not waive, but rather hereby expressly preserves, its right to direct further interrogatories to the State in accordance with all applicable Board rules and other applicable law.

PCC believes that its service of the PCC Interrogatories upon the State was consistent with an agreement by the parties that the 30-interrogatory limit established by 35 Ill. Adm. Code 101.620(a) ("Section 101.620(a)"), will not apply in this case. Furthermore, without ever seeking leave of the Board to exceed the 30-interrogatory limit, the State in this case already has directed more interrogatories<sup>2</sup> to PCC (47 numbered interrogatories with a total of 729 subparts)

<sup>1</sup> These sets of interrogatories were entitled Peabody's Third Set Of Interrogatories To The State; Peabody's Fourth Set Of Interrogatories To The State; Peabody's Fifth Set of Interrogatories To The State; and Peabody's Sixth Set Of Interrogatories To The State.

<sup>2</sup> Under Section 101.620(a), each subpart of a given interrogatory counts as a separate interrogatory for purposes of the 30-interrogatory limit.

than PCC has directed to the State (123 numbered interrogatories and a total of 501 subparts, including the recently served PCC Interrogatories); and PCC has responded via answer or objection to every one of those interrogatories before serving the PCC Interrogatories on the State. Therefore, PCC was surprised by the filing of Complainant's Motion For Protective Order ("State's Motion") by the State on June 4, particularly since the State made no reasonable effort to resolve its complaint about the PCC Interrogatories by agreement of the parties before filing that motion.<sup>3</sup>

Nonetheless, following the filing of the State's Motion, PCC has reviewed the interrogatories contained in the PCC Interrogatories and determined that it would be appropriate to restate certain of them. Accordingly, PCC is hereby withdrawing the PCC Interrogatories and will in the near future seek leave of the Board to direct additional interrogatories to the State, notwithstanding its position that the State has no basis to object to any further PCC Interrogatories on the basis of Section 101.620(a), now that the State has taken the position that it will object to any further interrogatories directed by PCC to the state on the basis of Section 101.620(a) unless PCC seeks leave to do so. Therefore, to the extent that the State's Motion is directed to the PCC Interrogatories, it has been mooted.

However, PCC's withdrawal of the PCC Interrogatories is without effect on the four sets of requests to the State for the production of documents served by PCC on May 23 to which the State's Motion also is directed. Rather, the State's Motion in this regard should be denied for the reasons stated in PC's Opposition Brief.

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<sup>3</sup> See the discussion at Section II.A. of PCC's Brief In Opposition To State's Motion For Protective Order (PCC Opposition Brief), filed herewith.

Date: June 12, 2003.

Respectfully submitted,

PEABODY COAL COMPANY

By its attorneys



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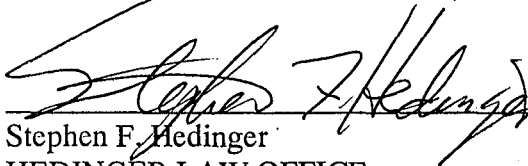
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PCB 99-134

**PCC'S BRIEF IN OPPOSITION TO  
STATE'S MOTION FOR PROTECTIVE ORDER**

Respondent, Peabody Coal Company ("PCC"), hereby submits its brief in opposition to Complainant's Motion For Protective Order ("State's Motion"), filed by Complainant, People of the State of Illinois ("State"), on or about June 4.<sup>1</sup>

**I. INTRODUCTION**

The State's complaint against PCC is 53 pages long, alleges more than 500 violations of Illinois environmental laws involving five separate chemicals of concern ("COCs"),<sup>2</sup> is based upon PCC's conduct over a period of more than 40 years, and seeks both a huge civil penalty and expensive injunctive relief. Given the nature and magnitude of this case as established by the State, PCC has no alternative but to vigorously defend itself against the State's claims. Litigation of a case of this magnitude and complexity is inevitably a major undertaking that consumes a great deal of every party's resources; and it is neither reasonable nor appropriate for the State to resist PCC's discovery requests simply on the grounds that those efforts will cause a

<sup>1</sup> All dates stated herein pertain to the year 2003, unless specifically stated otherwise.

<sup>2</sup> These COCs of concern are sulfates, chlorides, total dissolved solids ( TDS ), iron, and manganese. (TDS is not really a chemical, but it is appropriate to consider TDS as a COC as a matter of convention in this case.)

lot of work for the State's personnel. Rather, the State's basic complaint that underlies the State's Motion, i.e., that the discovery requests directed to it by PCC are numerous and that responding to them on the merits will require a substantial amount of work that must be evaluated in the context of PCC's right to develop and present a fair and full defense to the State's claims against it in this case.

On May 23, PCC served upon the State four sets of interrogatories and requests for the production of documents ("PCC Discovery Requests" collectively).<sup>3</sup> By the State's Motion, the State seeks a protective order that would relieve the State of any obligation to respond either to the interrogatories ("PCC Interrogatories") or the requests for the production of documents ("PCC Production Requests") in question. The basis for the State's Motion as to the PCC Interrogatories is stated to be PCC's failure to obtain leave of Board to direct more than 30 interrogatories to the State in this case. The basis for the State's Motion as to PCC's Production Requests is not clearly stated, but appears to be (a) the production requests are numerous, and (b) the State has already produced a lot of documents in this case.

As discussed below, the State's Motion should be denied, for the following reasons. First, the State failed to make any reasonable effort to resolve the discovery dispute that is the subject of the State's Motion prior to filing that motion, in accordance with Illinois Supreme Court Rule 201(k) ("Rule 201(k)"). Second, to the extent that the State's Motion is based upon a contention that PCC has directed more than 30 interrogatories to the State without leave of the Board, PCC has now withdrawn the PCC Interrogatories, subject to its intention to seek leave of the Board in the near future to direct additional interrogatories to the State. Third, to the extent the State's Motion is directed to the PCC Production Requests, it completely fails to articulate

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<sup>3</sup> Copies of the PCC Discovery Requests have been filed by the State as part of Exhibit A to the State's Motion.

any factual or legal basis upon which relief can be granted. Fourth, all of the production requests in question seek the production of documents that either contain information relevant to one or more issues that have been raised in this case or contain information calculated to lead to such relevant information and are reasonable in both nature and number given the nature and magnitude of the issues in this case.

## II. DISCUSSION

35 Ill. Adm. Code § 101.616(a) (“Section 101.616”) provides in subsection (a) that “[a]ll relevant information and information calculated to lead to relevant information is discoverable. . . .” Section 101.616 also provides in subsection (b) that “[i]f the parties cannot agree on the scope of discovery . . . , the hearing officer has the authority to order discovery or to deny requests for discovery.” Section 101.616 further provides at subsection (d) that “[t]he hearing officer may . . . on the motion of any party . . . , issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure. . . .” In light of this discovery framework, the State’s Motion falls far short of demonstrating good cause for the issuance of a protective order as requested.

### A. The State Has Failed To Comply With Rule 201(k).

Section 101.616 provides generally: “For purposes of discovery, the Board may look to . . . the Supreme Court Rules for guidance where the Board’s procedural rules are silent (see Section 101.100(b)).” Rule 201(k) provides important guidance here. That rule provides, in full:

The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal

consultation or was unreasonable in attempts to resolve differences.

Here, the State has made no reasonable effort to comply with Rule 201(k).<sup>4</sup> Indeed, the State's Motion contains no assertion that it has done so.

On May 30, 2003, the State's attorney of record, Jane E. McBride, sent a letter by U.S. Mail to PCC's attorneys, W. C. Blanton and Stephen F. Hedinger, by which Ms. McBride set forth the State's contention that PCC Interrogatories had been improperly served because PCC had not obtained leave from the Board to serve more than 30 interrogatories upon the State in accordance with 35 Ill. Adm. Code § 101.620(a) and the State's general complaint about the scope of the PCC Production Requests. Mr. Blanton received his copy of that letter on June 4; and Mr. Hedinger also received his copy on that date. In the meantime, on June 2, Ms. McBride transmitted another letter to Mr. Blanton and Mr. Hedinger via facsimile, by which Ms. McBride requested an immediate response to her May 30 letter. Mr. Blanton responded by e-mail on June 3, advising Ms. McBride that he had not received from her any letter dated May 30 addressing these issues. Ms. McBride then initiated transmission of her May 30 letter via facsimile on June 3 to Mr. Blanton at 4:33 p.m. and to Mr. Hedinger at 4:37 p.m. On the next morning, June 4, Ms. McBride initiated transmission via facsimile copies of the State's Motion, Notice Of Filing, and filing letter, without awaiting or further soliciting a response to her May 30 letter, which had been transmitted to PCC's attorneys late the previous day.<sup>5</sup>

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<sup>4</sup> The facts stated below are established by the Affidavit Of W. C. Blanton Relating To State's Motion For Protective Order and the Affidavit Of Stephen F. Hedinger Relating To State's Motion For Protective Order, both filed herewith.

<sup>5</sup> However, in her May 30 letter, Ms. McBride states that the letter was being sent to initiate the Rule 201(k) process, thereby acknowledging the State's understanding that it was required to make reasonable efforts to resolve this discovery dispute by agreement of the parties before seeking a resolution by the Board.



After receiving notice that the State's Motion was being filed, Mr. Hedinger and Mr. Blanton initiated a telephone call to Ms. McBride in an attempt to resolve this discovery dispute by agreement of the parties. During that conversation, Ms. McBride stated that the State's Motion had been written by Thomas Davis, Chief of the Environmental Bureau of the Office of the Attorney General of Illinois, and that he should participate in the call.<sup>6</sup> However, Mr. Davis apparently was unavailable, and Ms. McBride declined to discuss during that call the issues of (a) whether the PCC Discovery Requests seek information relevant to the issues presented in this case and information calculated to lead to such relevant information and the production of documents possessed by the State that contain such information, and (b) whether the PCC Discovery Requests constitute reasonable and appropriate means of obtaining such information.

Furthermore, at the June 10 meeting of the parties' attorneys sought by PCC, which required Mr. Blanton to travel from Kansas City, Missouri to Springfield, Illinois at considerable expense to PCC, Mr. Davis made it clear at the onset of the meeting that the State's representatives would not discuss the issues of whether the PCC Discovery Requests seek information that is subject to discovery and whether they constitute reasonable means of obtaining such information; and the State's attorneys adhered to that position throughout the meeting. Indeed, Mr. Davis indicated that he had not up to that point in time even read the interrogatories and production requests at issue, and Ms. McBride stated that she had not read all of them until the day before the meeting, *i.e.*, nearly a week after she had filed the State's Motion.

In summary, the State made no reasonable effort to resolve the discovery dispute that is the subject of the State's Motion through consultation by the parties' attorneys, as required by

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<sup>6</sup> Mr. Davis has not appeared of record on behalf of the State in this proceeding.

Rule 201(k), before filing that Motion.<sup>7</sup> Notably, the State's Motion itself contains no statement by the State's attorney of record that she has made required consultation and other reasonable attempts to resolve this discovery dispute; nor does the State's Motion otherwise contend that to be so. Therefore, the State's Motion should be summarily denied.

**B. The State's Motion Is Moot As To The PCC Interrogatories.**

To the extent that the State's Motion is directed to the PCC Interrogatories, it has been mooted. PCC has now withdrawn all of the PCC Interrogatories, so that no issue regarding those discovery requests is pending before the Board at this time. Consequently, to the extent the State's Motion is directed to the PCC Interrogatories, it must be denied as moot.

**C. The State Has Set Forth No Basis For Objection To The Production Requests.**

The State has made virtually no effort to justify its request for a protective order with respect to PCC's Production Requests. Rather, the State merely notes that there are a total of 128 individual requests, asserts that "many" of the requests are "duplicative of prior requests" without specifically identifying any such allegedly duplicative requests, asserts that its expert witness disclosures made after service of PCC Production Requests "are responsive to . . . many of the some of [sic] the recently propounded requests," and suggests that the Section 101.616(d) standard for the issuance of a protective order are somehow satisfied here. This falls far short of the showing required for the issuance of a protective order.

First, each set of the PCC Production Requests includes the following instruction:

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<sup>7</sup> In contrast, PCC anticipated the State's reaction to the PCC Discovery Requests and, before they were served, invited the State's attorney of record to discuss any concerns that the State might have regarding those requests after reviewing them in sufficient detail to understand the actual nature and scope of the requests, attempted to discuss the substantive scope and nature of the PCC Discovery Requests with the State's attorney of record on June<sup>4</sup>, and again attempted to discuss the substantive scope and nature of the PCC Discovery Requests with the State's attorney of record, the Chief of the Environmental Bureau, and the IEPA attorney responsible for this case on June<sup>10</sup> \_ but all of these efforts were rebuffed by the State.

It is not PCC's intention by these production requests to seek documents that have previously been provided by the State in its responses to production requests previously directed to it by PCC. Therefore, all of the production requests below should be construed as consistent with that intention, even if a production request by its terms could be construed to seek such documents, so that no objection on those grounds is necessary. However, if you contend that any document sought by any production request below has been previously provided to PCC in response to a production request previously directed to the State, identify the production request response by which that document was previously provided to PCC.

Therefore, even if some individual request can be reasonably construed to be duplicative of an earlier request, which PCC believes in fact is unlikely, little effort by the State is required to respond in accordance with the instruction.

Second, to the extent that the State has provided PCC certain documents that are responsive to some of the PCC Production Requests after they were served, all the State has to do is say so in its responses to those requests.

Third, the State's purported reliance on Rule 201(k) here is at best curious. It was PCC's intention and effort to seek only the production of documents via the PCC Production Requests that had not been produced by the State in response to PCC's prior requests.<sup>8</sup> If PCC nonetheless has somehow reiterated some prior satisfied production requests, that does not mean a discovery dispute governed by Rule 201(k) exists, especially in light of PCC's instruction. If the State believes that it has previously responded to a request, it merely needs to comply with the

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<sup>8</sup> PCC acknowledges that some few of the PCC Production Requests reiterate production requests previously directed to the State to which the State had not responded at all prior to PCC's service of the PCC Production Requests. These few situations involve requests prompted by the State's original complaint in this case. As that complaint now has been substantially modified, PCC's new requests are necessary and appropriate.

Instruction relating to duplicate requests.<sup>9</sup> If it has not previously responded, it should simply do so now.

Finally, the State has made no effort to demonstrate that responding to the PCC Production Requests would cause the State unreasonable expense; or that the production requests constitute harassment of any sort; or that the resolution of this case should be expedited at the expense of PCC's right to conduct appropriate discovery relevant to the issues presented in this case. Rather, all the State has done to support the State's Motion with respect to the PCC Production Requests is to complain that there are a lot of them. Having failed to offer up even a prima facie case to support the State's Motion as to the PCC Production Requests, the motion must be denied.

**D. The Production Requests Seek Information And Documents That Are Subject To Discovery.**

As noted above, this is a big case, with a lot of issues, and a lot at issue for both parties, not just the State. Here, the State has provided no basis for the Board to deny PCC a fair and reasonable opportunity to review the documents in the possession of the State that will enable PCC to develop and present its defense to the State's claims at the adjudicatory hearing in this matter. The PCC Discovery Requests are critical to that effort; and PCC will be substantially prejudiced if it is denied the discovery sought thereby.

All of the PCC Production Requests seek the production of documents that contain information that is relevant to one or more issues that have been raised in this case and/or information that is calculated to lead to such relevant information, i.e., documents subject to discovery. See Section 101.616(a). Therefore, unless a particular production request is subject

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<sup>9</sup> Ironically, PCC reiterating a production request affords the State more rights than the Rule 201(k) process does. The State can assert any valid objections it may have to the new requests; but is bound by its stated objections to the earlier but purportedly same requests.

to a valid objection on some other grounds, the State has an obligation to produce the documents sought.

There are five primary issues that have been raised in this case that are addressed by the PCC Production Requests.<sup>10</sup> The first issue is whether Counts II and III of the State's complaint against PCC in this case have been brought and are being prosecuted by the Attorney General of Illinois ("AG") on his/her own behalf, as the State alleges, or whether instead those Counts actually have been brought and are being prosecuted by the AG on behalf of the IEPA. The second issue is how and to what extent has the quality of the groundwater that is the subject of this matter been adversely affected by COCs generated at PCC's mine that is the subject of this matter. The third issue is whether "water pollution" within the meaning of that term as used in the Illinois Environmental Protection Act ("Act") has occurred in the groundwater that is the subject of this matter and/or whether PCC's coal mining refuse disposal practices at the Mine actually have created a "water pollution hazard" within the meaning of that term as used in the Act as a result of the generation of COCs at the Mine.<sup>11</sup> The fourth issue is closely related to the third issue, *i.e.*, how serious are the alleged exceedances of applicable groundwater quality standards alleged by the State, in that not every substance for which a water quality standard has been promulgated poses the same potential risk of harm to the beneficial uses of groundwater. The fifth (and broadest) issue is what is an appropriate penalty to be imposed upon PCC if the violations of the Act alleged by the State are found to have been proven, which involves

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<sup>10</sup> These are not all of the issues that have been raised in this case, just the ones relevant to the PCC Production Requests.

consideration of those facts relevant to the factors to be considered under 415 ILCS 5/33(c) and 5/42(h).<sup>12</sup>

Each of the PCC Production Requests has been narrowly drawn to elicit information and/or documents either relevant to one or more of these issues, relating to some specific relevant factual topic, or constituting basic “loose ends” matters. A chart that identifies the issues or topics as to which each of the PCC Production Requests were in dispute is attached as Appendix A.

Certain of the PCC Production Requests require special comment. First, 22 of the production requests merely seek documents from the State that are exactly the same in nature as those sought by certain of the State’s production requests to PCC; these are merely sending the State’s requests back to it. Second, 40 of the production requests are stated so as to seek precisely the same sort of documents with respect to each of the five COCs, thereby perhaps giving the impression that responding to those requests involves five times the effort than is really the case.<sup>13</sup> Third, eight of the requests (the first two in each set) are in the nature of “loose ends” catchers; they ask for documents relating to the State’s responses to interrogatories and are completely standard practice.

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<sup>11</sup> Under Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d), it is not merely the act of introducing a pollutant into the waters of Illinois that constitutes water pollution. Rather, as defined in the Act, water pollution is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.55.

<sup>12</sup> As the State has not even attempted to argue that the documents sought by the PCC Discovery Requests are not subject to discovery under Section 101.616(a) — which would have been hard to do without reading the requests — PCC has not attempted in this brief to detail how its requests relate to these factors. However, it is fully prepared to do so if and when the State might properly challenge that proposition.

<sup>13</sup> PCC stated these production requests separately for each of the five COCs because it reasonably believes that the State possesses documents of the nature sought with respect to some of the five COCs but not all of them; and it is important for the purposes of PCC’s defense in this case to make a record as to which, if any, of the COCs the State possesses certain information.

In summary, the PCC Production Requests are proper as a matter of substance, and PCC doubts that the State will seriously contend otherwise as to many, if any, of them if it is required to satisfy its general obligation to respond to the requests. Given the nature and magnitude of the claims asserted against it by the State in this case, there can be no reasonable dispute of the proposition that PCC will be substantially prejudiced if it is not permitted to obtain the information and documents sought by the PCC Production Requests and discoverable under Section 101.616(a).

**III. CONCLUSION**

For the reasons discussed above, the State's Motion should be denied.

Date: June 12, 2003

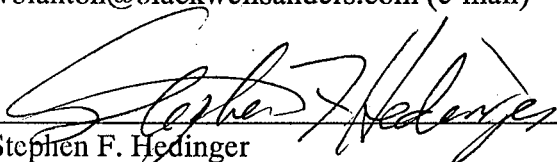
Respectfully submitted,

PEABODY COAL COMPANY

By its attorneys



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## APPENDIX A

### Production Requests

### Issues Addressed

#### Fourth Set

1 - 2	Standard
3 - 4	Impact on the aquifer
5 - 12	Whether Counts II and III have been brought by the AG on his/her own behalf, as alleged by the State
13 - 15	Standard
16 - 17	Standard
18	Standard
19	Standard
20	Standard
21	Standard

#### Fifth Set

1 - 2	Standard
3	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
4 - 8	Impact on the aquifer Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
9 - 10	Withdrawn for now
11 - 12	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
13	Impact on the aquifer
14 - 18	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
19 - 20	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
21 - 41	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
42 - 46	Impact on the aquifer; whether "water pollution" or "water pollution hazard" has occurred; seriousness of alleged violations
47	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations
48 - 55	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations; Appropriate penalty

- 56 (both) Whether "water pollution" or "water pollution hazard" has occurred;  
Seriousness of alleged violations
- 57 Whether "water pollution" or "water pollution hazard" has occurred;  
Seriousness of alleged violations;  
Appropriate penalty

**Sixth Set**

- 1 - 2 Standard
- 3 - 5 Appropriate penalty
- 6 - 13 Appropriate penalty
- 14 - 15 Appropriate penalty; will limit to info regarding GMZs
- 16 - 17 Appropriate penalty
- 18 - 25 Appropriate penalty
- 26 Whether "water pollution" or "water pollution hazard" has occurred;  
Seriousness of alleged violations;  
Appropriate penalty

**Seventh Set**

- 1 - 2 Standard
- 2 - 24 Same (and all) issues as to which the information sought has been  
deemed relevant by the State by its corresponding production requests

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Pollution Control Board  
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**AFFIDAVIT OF W. C. BLANTON RELATING TO  
STATE'S MOTION FOR PROTECTIVE ORDER**

W. C. Blanton, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.
2. I am an attorney duly authorized to practice law in the States of Indiana, Missouri, and Minnesota; and I am one of the attorneys of record for Respondent, Peabody Coal Company ("PCC"), in connection with the above-captioned matter, having been granted leave by the Illinois Pollution Control Board ("Board") to appear pro hac vice in this matter on behalf of PCC.
3. This affidavit is being filed with the Board as part of PCC's opposition to Complainant's Motion For Protective Order ("State's Motion"), filed in this matter on or about June 4<sup>1</sup> by Complainant, People of the State of Illinois ("State").

<sup>1</sup> All dates stated herein are for the year 2003, unless specifically stated otherwise.

4. On May 8, in an in-person conversation, I advised Jane E. McBride, the State's attorney of record in this case, and attorney Stephen C. Ewart (the Illinois Environmental Protection Agency attorney having primary responsibility within that agency for the handling of this case) that PCC would within a few days thereafter serve numerous interrogatories and production requests upon the State and that I anticipated the State's attorney's initial reaction to those discovery requests to be negative. I also advised Ms. McBride and Mr. Ewart at that time (a) that those discovery requests would be narrowly drawn and be directed to specific issues that have been raised in this case, (b) that PCC anticipated the State having no information or documents responsive to a large number of the requests, (c) that PCC would be willing to clarify, make more specific, or otherwise scale back the scope of certain requests, if appropriate, and (d) that PCC would generally work with the State so that it would not be unduly burdensome for the State to provide PCC the information and documents sought by the requests.

5. A copy of my letter to Ms. McBride that accompanied the four sets of interrogatories and production requests served upon the State that day ("PCC Discovery Requests") is attached as Exhibit A to the State's Motion.<sup>2</sup>

6. On June 4, I received via U. S. mail a letter from Ms. McBride dated May 30 and addressed to Stephen F. Hedinger and me, a copy of which is attached as Exhibit 1.

7. Prior to my receipt of Ms. McBride's May 30 letter, I received via facsimile a letter from Ms. McBride dated June 2 and addressed to Mr. Hedinger and me, a copy of which is attached as Exhibit 2.

8. On June 3, I transmitted an e-mail message to Ms. McBride, a copy of which is attached as Exhibit 3.

---

<sup>2</sup> This letter is misdated as "March 25, 2002." The letter and enclosures were actually mailed on May 23, 2003.

9. Later on June 3, Ms. McBride transmitted her May 30 letter described above to me via facsimile. A copy of that copy of the letter is attached as Exhibit 4.

10. On June 4, Ms. McBride transmitted to me via facsimile a copy of the State's Motion, which apparently was transmitted to the Board for filing that day. A copy of the cover sheet for that transmittal is attached as Exhibit 5.


11. Prior to my receipt of the copy of the State's Motion transmitted to me via facsimile, Ms. McBride and I had not discussed the State's objections to the discovery requests directed to the State by PCC that are the subject of her May 30 letter and the State's Motion.

12. On the afternoon of June 4, Mr. Hedinger and I placed a telephone call to Ms. McBride to discuss the issues raised by her May 30 letter and the State's Motion. At that time, Ms. McBride declined to discuss the issue of whether the PCC Discovery Requests seek to elicit information relevant to the issues in this case and/or calculated to lead to such relevant information and the production of documents possessed by the State that contain such information. During that conversation, Ms. McBride stated that Thomas Davis, Chief of the Environmental Bureau of the Office of the Attorney General of Illinois, had written the State's Motion.

13. On June 10, Ms. McBride, Mr. Ewart, Mr. Davis, Mr. Hedinger and I met at the offices of the Attorney Illinois Attorney General in Springfield, Illinois to discuss the matters that are subject of Ms. McBride's May 30 letter and the State's Motion. (This meeting required me to travel from Kansas City, Missouri to Springfield at considerable expense to PCC.) At that meeting, Mr. Davis informed Mr. Hedinger and me that it is the State's position that it will not, prior to the issuance of a ruling on the State's Motion, discuss with PCC the issue of whether the PCC Discovery Requests seek to elicit information relevant to the issues in this case and/or

calculated to lead to such relevant information and the production of documents possessed by the State that contain such information. At that meeting, Mr. Davis also stated indicated that he had not up to that point in time read the individual interrogatories and production requests contained in the PCC Discovery Requests; and Ms. McBride stated at the meeting that she had not read all of those individual interrogatories and production requests until June 9.

Further affiant sayeth not.


  
W. C. Blanton

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this

12<sup>th</sup> day of June, 2003.



  
Notary Public

My Commission Expires:

7-23-06

LAW FIRM

**BLACKWELL SANDERS PEPER MARTIN**  
LLP

2300 MAIN STREET SUITE 1000 KANSAS CITY, MO 64108  
P.O. BOX 419777 KANSAS CITY, MO 64141-6777  
TEL: (816) 983-8000 FAX: (816) 983-3080  
WEBSITE: www.blackwellsanders.com

W.C. BLANTON  
DIRECT: (816) 983-8151

DIRECT FAX: (816) 983-9151  
E-MAIL: wblanton@blackwellsanders.com

March 25, 2002

**RECEIVED**  
ATTORNEY GENERAL

MAY 27 2003

ENVIRONMENTAL

Jane E. McBride  
Environmental Bureau  
Assistant Attorney General  
500 S. Second St.  
Springfield, IL 62706

Re: People of the State of Illinois v. Peabody Coal Company  
PCB Case No. 99-134  
Our File No. 2597-3

Dear Jane:

Enclosed and hereby served upon you are copies of the following discovery requests directed to the State by Peabody Coal Company ("PCC") in connection with the above-referenced matter:

- Peabody's Third Set Of Interrogatories To The State;
- Peabody's Fourth Set Of Requests To The State For The Production Of Documents;
- Peabody's Fourth Set Of Interrogatories To The State;
- Peabody's Fifth Request To The State For The Production Of Documents;
- Peabody's Fifth Set Of Interrogatories To The State;
- Peabody's Sixth Request To The State For The Production Of Documents;
- Peabody's Sixth Set Of Interrogatories To The State; and
- Peabody's Seventh Request To The State For The Production Of Documents.

As I indicated to you a couple of weeks ago, we believe the information and documents sought by these discovery requests are subject to discovery given the nature and scope of issues in this case. However, we recognize that the requests are numerous; and it is not our intention to cause the State to undertake efforts that are not necessary to locate and provide us the

Exhibit A

KC-1001309-1

**BLACKWELL SANDERS PEPER MARTIN**  
LLP

Jane McBride  
March 21, 2002  
Page 2

information we need in order to respond to the State's claims against PCC asserted in this case. Accordingly, please call me to discuss any questions or concerns that you have regarding these discovery requests.

Best regards --

Very truly yours,



W.C. Blanton

WCB/cs

Enclosures

cc: Steve Hedinger  
Dave Joest





JUN 04 REGD

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 30, 2003

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

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

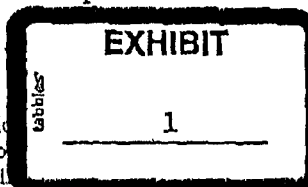
Re: *People v. Peabody Coal Company*, PCB 99-134

Dear Mr. Blanton and Mr. Hedinger:

I am writing regarding the discovery requests received by this office on May 27, 2003 relative to the above-referenced matter. Please consider this letter the initiation of S. Ct. Rule 201(k) consultation regarding these requests. The cover letter included in transmission of these requests, identified as Peabody's Third Set of Interrogatories through Seventh Request for Production of Documents, is attached hereto as Exhibit A.

As you are aware, Peabody propounded its first request for production to the Complainant on July 28, 1999 that included a very broad request for documents from the files of the Illinois EPA, Illinois DNR and Illinois Dept. of Public Health. Respondent's first set of interrogatories was propounded upon the Complainant on November 4<sup>th</sup>, 1999, and included 45 interrogatories. Respondent's second request for production was propounded upon Complainant on November 5, 1999, and included very broad individual requests for documents from the files of the Illinois State Geological Survey, the Illinois State Water Survey, the Illinois EPA and the Illinois DNR. Respondent propounded its second set of interrogatories and third request for production of documents on March 15, 2000. The third set of interrogatories requested disclosure of opinion and fact witnesses. Said disclosure was completed by Complainant, reserving its right to disclose additional rebuttal witnesses, on May 23, 2003, pursuant to the discovery schedule that has been established in this matter.

All of the above-referenced requests have been complied with and have been supplemented by the Complainant. Complainant is currently about to provide the Respondent



Mr. W.C. Blanton, Esq  
May 30, 2003  
Page 2

with another supplemental production, which will be followed in due time by another supplemental production. These supplemental productions include documents that have come into being through the duration of this case.

As stated above, the Respondent has already propounded 47 interrogatories. The recently received sets of interrogatories consist of the following: third set, 12 interrogatories; fourth set, 30 interrogatories; fifth set, 17 interrogatories, sixth set, 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: fourth set of requests, 21 individual requests for production; fifth set of requests, 57 individual requests for production; sixth set of requests, 26 individual requests; seventh set of requests, 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 concerning witnesses and the opinions and conclusions of controlled experts are responsive to both any outstanding requests and also to many of the recently propounded requests.

It is incumbent upon the Respondent to justify this newly propounded, tremendously over burdensome set of discovery requests. This is particularly so given the recent efforts to establish a discovery schedule that already has placed pressure on counsel to timely and succinctly undertake and expedite all remaining discovery so that this matter might proceed to hearing. Therefore, Complainant, as a somewhat unorthodox request, asks the assistance of the Hearing Officer in quickly resolving this discovery dispute. With this letter, Complainant is asking that a status conference be scheduled as early as the later part of next week, at which time counsel, with the assistance of the Hearing Officer, may conduct a discussion that will resolve this discovery matter. This request is designed to provide for a timely resolution of this dispute, so that the Complainant might quickly ascertain upon order of the Hearing Office exactly which requests are considered justifiable and thereby requiring response. The time of later next week is requested so that Tom Davis, Bureau Chief, might participate in this discussion.

As stated in Complainant's response to Respondent's motion for leave of Counsel W.C. Blanton to appear *pro hac vice*, filed in this matter on February 11, 2002, in paragraph 18 on page 4 of the response: "... Complainant objects on the grounds that Mr. Blanton's entry of appearance in this matter is being submitted relatively late in the litigation. The parties have already tendered discovery requests, and Complainant has already made available the files of four state agencies in response to those discovery requests. . . ." In support of this objection, Complainant cited the following case, at paragraph 22 of the response:

22. In the case of *Hallmann v. Sturn Ruger & Co.*, 31 Wash. App 50 (1982),

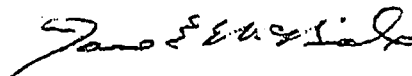
Mr. W.C. Blanton, Esq  
May 30, 2003  
Page 3

639 P.2d. 805, cited in Michael A. DiSabatino, J.D., Annotation, Attorney's Right to Appear *Pro Hac Vice* in State Court, 20 A.L.R. 4<sup>th</sup> 855 (2001), the court reversed a trial court's revocation of an Alaska attorney's admission *pro hac vice* to represent clients in civil litigation because the trial court had acted on its own motion without having given prior notice or having held a hearing. But in its ruling, the court said that the trial court had been understandably concerned that the Alaska attorney had commingled the Washington case with cases pending in other jurisdictions, had attempted to consolidate discovery in these actions, and had submitted lengthy memoranda which in the trial court's mind contained irrelevant authority from other jurisdictions and created what the trial court termed a "monstrosity" of a case. The court stressed that the clients of the out-of-state attorney had an interest in retaining the attorney of their choice, but that their interest had to be balanced with the court's responsibility to insure order, and with the opposing counsel's interest in his ability to proceed with the litigation without scheduling complications. The court said that these competing interest could best be protected if, on remand to the trial court, inquiry were limited to whether the acts of the out-of-state attorney violated the code of professional responsibility, or were contemptuous of the court, or adversely affected the conduct of the litigation.

It appears that the predictions contained within Complainant's objection to Mr. Blanton's entry in this case have indeed come true.

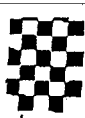
I will soon place a call to Mr. Halloran to inquire whether he would be willing to set the requested status conference and participate in discovery dispute discussions so that this issue might be quickly resolved.

Sincerely,



Jane E. McBride  
Assistant Attorney General  
(217) 782-9033

cc: Mr. Bradley P. Halloran, Esq.  
Mr. Stephen Ewart, Esq.  
Mr. Thomas Davis, Esq.



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

FAX TRANSMITTAL SHEET  
ENVIRONMENTAL BUREAU - SPRINGFIELD  
FAX NO. (217) 524-7740

DATE: 6/10/03

TO: W. C. Blanton

FAX NO: 516 983 9157

FROM: Lisa Madigan

PHONE NO: 217 782 9033

NUMBER OF PAGES: 2 (INCLUDING THIS PAGE)

HARD COPY TO FOLLOW:  YES  NO

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Contact Person: \_\_\_\_\_

Phone No. \_\_\_\_\_

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NOTES:

EXHIBIT  
2



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

June 2, 2003

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

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

Via Facsimile  
(816) 983-8151

Via Facsimile  
(217) 523-4366

Re: *People v. Peabody Coal Company*, PCB 99-134

Dear Mr. Blanton and Mr. Hedinger:

Mr. Halloran is available for a brief status conference on the issue of your recent discovery requests at 9:15 A.M. on Thursday, June 5. He has asked that we provide him with a written motion prior to his participation in discussions on this dispute. I have indicated to him that we would transmit a written motion prior to the time of the status conference. He also reminds the parties that he is scheduled to go on family leave in the very near future. He suggests we attempt to resolve the issue before he is called away.

I would ask that you provide a response to my letter of May 30, 2003, as soon as possible to facilitate any discussion that might be possible prior to Thursday. We would expect your response to indicate which portion of the recent request you are willing to withdraw, and an explanation as to why you feel the remainder of the request is justified.

Sincerely,

Jane E. McBride  
Assistant Attorney General  
(217) 782-9033.

cc: Mr. Stephen Ewart, Esq.

**Blanton, WC**

---

**From:** Blanton, WC  
**Sent:** Tuesday, June 03, 2003 1:48 PM  
**To:** 'JANE MCBRIDE'  
**Cc:** 'hedinger@cityscape.net'  
**Subject:** RE: People v. Peabody Coal, Depositions

This is in response to your fax late yesterday. Neither Steve Hedinger nor I have received any letter from you dated May 30 regarding PCC's most recent sets of discovery requests. That makes it a little hard to respond to your fax.

-----Original Message-----

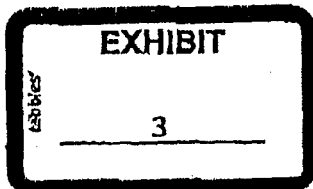
**From:** JANE MCBRIDE [mailto:JMCBRIDE@atg.state.il.us]  
**Sent:** Wednesday, May 28, 2003 9:45 AM  
**To:** wblanton@Blackwellsanders.com; hedinger@cityscape.net  
**Subject:** People v. Peabody Coal, Depositions

Steve and WC

The only dates where I have three consecutive days of availability for all concerned, for depositions, are July 1 through 3.

Please call me today regarding the scheduling of deposition. (217) 782-9033.

Jane McBride





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

FAX TRANSMITTAL SHEET  
ENVIRONMENTAL BUREAU - SPRINGFIELD  
FAX NO. (217) 524-7740

DATE: 6/12/03

TO: W.C. Blanton

FAX NO: 816 983 9151

FROM: Janice [Signature]

PHONE NO: \_\_\_\_\_

NUMBER OF PAGES: 4 (INCLUDING THIS PAGE)

HARD COPY TO FOLLOW:  YES  NO

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Contact Person: \_\_\_\_\_

Phone No. \_\_\_\_\_

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NOTES:

EXHIBIT  
4



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 30, 2003

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

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

Re: *People v. Peabody Coal Company*, PCB 99-134

Dear Mr. Blanton and Mr. Hedinger:

I am writing regarding the discovery requests received by this office on May 27, 2003 relative to the above-referenced matter. Please consider this letter the initiation of S. Ct. Rule 201(k) consultation regarding these requests. The cover letter included in transmission of these requests, identified as Peabody's Third Set of Interrogatories through Seventh Request for Production of Documents, is attached hereto as Exhibit A.

As you are aware, Peabody propounded its first request for production to the Complainant on July 28, 1999 that included a very broad request for documents from the files of the Illinois EPA, Illinois DNR and Illinois Dept. of Public Health. Respondent's first set of interrogatories was propounded upon the Complainant on November 4<sup>th</sup>, 1999, and included 45 interrogatories. Respondent's second request for production was propounded upon Complainant on November 5, 1999, and included very broad individual requests for documents from the files of the Illinois State Geological Survey, the Illinois State Water Survey, the Illinois EPA and the Illinois DNR. Respondent propounded its second set of interrogatories and third request for production of documents on March 15, 2000. The third set of interrogatories requested disclosure of opinion and fact witnesses. Said disclosure was completed by Complainant, reserving its right to disclose additional rebuttal witnesses, on May 23, 2003, pursuant to the discovery schedule that has been established in this matter.

All of the above-referenced requests have been complied with and have been supplemented by the Complainant. Complainant is currently about to provide the Respondent



Mr. W.C. Blanton, Esq  
May 30, 2003  
Page 2

with another supplemental production, which will be followed in due time by another supplemental production. These supplemental productions include documents that have come into being through the duration of this case.

As stated above, the Respondent has already propounded 47 interrogatories. The recently received sets of interrogatories consist of the following: third set, 12 interrogatories; fourth set, 30 interrogatories; fifth set, 17 interrogatories, sixth set, 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: fourth set of requests, 21 individual requests for production; fifth set of requests, 57 individual requests for production; sixth set of requests, 26 individual requests; seventh set of requests, 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 concerning witnesses and the opinions and conclusions of controlled experts are responsive to both any outstanding requests and also to many of the recently propounded requests.

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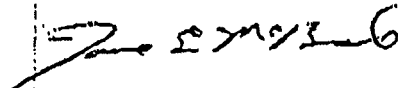
Mr. W.C. Blanton, Esq  
May 30, 2003  
Page 3

639 P.2d. 805, cited in Michael A. DiSabatino, J.D., Annotation, Attorney's Right to Appear *Pro Hac Vice* in State Court, 20 A.L.R. 4<sup>th</sup> 855 (2001), the court reversed a trial court's revocation of an Alaska attorney's admission *pro hac vice* to represent clients in civil litigation because the trial court had acted on its own motion without having given prior notice or having held a hearing. But in its ruling, the court said that the trial court had been understandably concerned that the Alaska attorney had commingled the Washington case with cases pending in other jurisdictions, had attempted to consolidate discovery in these actions, and had submitted lengthy memoranda which in the trial court's mind contained irrelevant authority from other jurisdictions and created what the trial court termed a "monstrosity" of a case. The court stressed that the clients of the out-of-state attorney had an interest in retaining the attorney of their choice, but that their interest had to be balanced with the court's responsibility to insure order, and with the opposing counsel's interest in his ability to proceed with the litigation without scheduling complications. The court said that these competing interest could best be protected if, on remand to the trial court, inquiry were limited to whether the acts of the out-of-state attorney violated the code of professional responsibility, or were contemptuous of the court, or adversely affected the conduct of the litigation.

It appears that the predictions contained within Complainant's objection to Mr. Blanton's entry in this case have indeed come true.

I will soon place a call to Mr. Halloran to inquire whether he would be willing to set the requested status conference and participate in discovery dispute discussions so that this issue might be quickly resolved.

Sincerely,



Jane E. McBride  
Assistant Attorney General  
(217) 782-9033

cc: Mr. Bradley P. Halloran, Esq.  
Mr. Stephen Ewart, Esq.  
Mr. Thomas Davis, Esq.



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

FAX TRANSMITTAL SHEET  
ENVIRONMENTAL BUREAU - SPRINGFIELD  
FAX NO. (217) 524-7740

DATE: 6/14/03

TO: W.C. Blomster

FAX NO: 816 983-9151

FROM: Gene McBride

PHONE NO: 782 9031

NUMBER OF PAGES: 8 (INCLUDING THIS PAGE)

HARD COPY TO FOLLOW:  YES  NO

IF YOU DO NOT RECEIVE ANY OF THE PAGES PROPERLY, PLEASE CONTACT SENDER/CALL BACK PERSON AS SOON AS POSSIBLE.

Contact Person: Reggy

Phone No. \_\_\_\_\_

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NOTES: Exhibits being made

EXHIBIT  
5

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 17 2003

STATE OF ILLINOIS  
Pollution Control Board

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

PCB 99-134

**AFFIDAVIT OF STEPHEN F. HEDINGER RELATING  
TO STATE'S MOTION FOR PROTECTIVE ORDER**

Stephen F. Hedinger, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.
2. I am an attorney duly licensed to practice law in the State of Illinois; and I am one of the attorneys of record for Respondent, Peabody Coal Company ("PCC") in connection with the above-captioned matter.
3. This affidavit is being filed with the Illinois Pollution Control Board ("Board") as part of PCC's opposition to Complainant's Motion For Protective Order ("State's Motion"), filed in this matter on or about June 4<sup>1</sup> by Complainant, People of the State of Illinois ("State").
4. On or about July 28, 1999, State served upon PCC a set of interrogatories consisting of 21 numbered interrogatories with a total of 54 subparts and a set of requests for the production of documents consisting of six individual production requests.

<sup>1</sup> All dates stated herein are for the year 2003, unless specifically stated otherwise.

5. On or about August 26, 2002, the State served upon PCC a second set of interrogatories consisting of 26 numbered interrogatories with a total of 675 subparts and a second set of requests for the production of documents consisting of 23 broad individual production requests.

6. On June 4, I received via U. S. mail a letter from the State's attorney of record in this matter, Jane E. McBride, dated May 30 and addressed to W. C. Blanton and me. A copy of this letter is attached to the Affidavit Of W. C. Blanton Relating To State's Motion For Protective Order ("Blanton Affidavit"), dated June 12, 2003, as Exhibit 1.

7. Prior to my receipt of Ms. McBride's May 30 letter, I received via facsimile a letter from Ms. McBride dated June 2 and addressed to Mr. Blanton and me, a copy of which is attached as Exhibit 2 to the Blanton Affidavit.

8. On June 3, Ms. McBride transmitted her May 30 letter described above to me via facsimile, with that transmission being initialed at 4:37 p.m. A copy of that copy of the letter is attached as Exhibit 4 to the Blanton Affidavit.

9. On June 4, Ms. McBride transmitted to me via facsimile a copy of the State's Motion, which apparently was transmitted to the Board for filing that day. That transmission was initiated at 10:34 a.m.

10. Prior to my receipt of the copy of the State's Motion transmitted to me via facsimile, Ms. McBride and I had not discussed the State's objections to the discovery requests directed to the State by PCC that are the subject of her May 30 letter and the State's Motion.

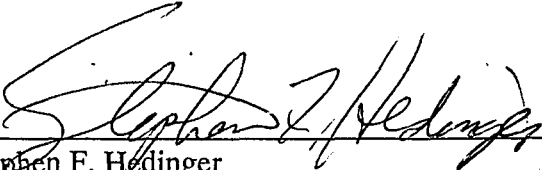
11. On the afternoon of June 4, Mr. Blanton and I placed a telephone call to Ms. McBride to discuss the issues raised by her May 30 letter and the State's Motion. At that time, Ms. McBride declined to discuss the issue of whether the PCC Discovery Requests seek to

elicit information relevant to the issues in this case and/or calculated to lead to such relevant information and the production of documents possessed by the State that contain such information. During that conversation, Ms. McBride stated that Thomas Davis, Chief of the Environmental Bureau of the Office of the Attorney General of Illinois, had written the State's Motion.

12. On June 6, I contacted Ms. McBride by telephone and requested a meeting to be attended by Ms. McBride, Mr. Davis, Mr. Blanton, and me on June 10 to discuss the issues raised by Ms. McBride's May 30 letter and the State's Motion; and that meeting was agreed to.

13. On June 10, Ms. McBride, Mr. Davis, Stephen C. Ewart, Mr. Blanton and I met at the offices of the Attorney General of Illinois in Springfield, Illinois to discuss the matters that are subject of Ms. McBride's May 30 letter and the State's Motion. At that meeting, Mr. Davis informed Mr. Blanton and me that it is the State's position that it will not, prior to the issuance of a ruling on the State's Motion, discuss with PCC the issue of whether the PCC Discovery Requests seek to elicit information relevant to the issues in this case and/or calculated to lead to such relevant information and the production of documents possessed by the State contain such information. At that meeting, Mr. Davis also indicated that he had not up to that point in time read the individual interrogatories and production requests contained in the PCC Discovery Requests; and Ms. McBride stated at that meeting that she had not read all of those individual interrogatories and production requests until June 9, which was five days after the State had served its motion for protective order.

Further affiant sayeth not.

  
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Stephen F. Hedinger

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF SANGAMON )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this  
12<sup>th</sup> day of June, 2003.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
9-13-2006

