BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 2 4 2003
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 99-134**
	)	**(Enforcement)**
PEABODY COAL COMPANY,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

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

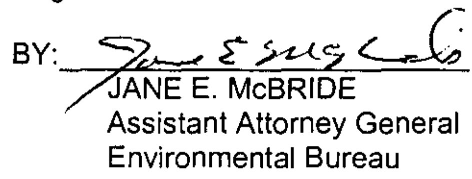
W. C. Blanton
Blackwell Sanders Peper Martin LLP
2300 Main Street, Suite 1000
Kansas City, MO 64108

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, MOTION FOR LEAVE TO REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER, REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER and 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 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on June 19, 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 NOTICE OF FILING, MOTION FOR LEAVE TO REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER, REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER and PROTECTIVE ORDER

To: David R. Joest
Peabody Coal Company
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Stephen F. Hedinger
Hedinger Law Office
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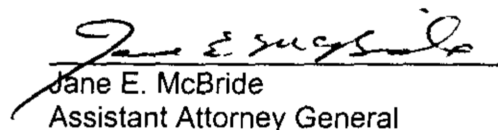
W. C. Blanton
Blackwell Sanders Peper Martin LLP
2300 Main Street, Suite 1000
Kansas City, MO 64108

and the original and ten copies by First Class Mail with postage thereon fully prepaid 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

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Brad Halloran
Hearing Officer
Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, IL 60601



Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

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JUN 2 4 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 99-134**
	)	**(Enforcement)**
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

MOTION FOR LEAVE TO REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER

NOW COMES, Complainant, PEOPLE OF THE STATE OF ILLINOIS, and moves for leave to reply to Respondent's Brief in Opposition to State's Motion for Protective Order, on the following grounds:

1. On June 2, 2003, Complainant notified the hearing officer of the existence of a discovery dispute between the parties and requested a hearing with regard to the dispute.

2. On June 4, 2003, Complainant filed a motion seeking a protective order from the Hearing Officer regarding Respondent's third through sixth sets of interrogatories and fourth through seventh sets of requests for production of documents.

3. On June 5, 2003, a hearing was held on the matter at which time the Hearing Officer directed the Respondent to file its response by June 12, 2003.

4. On June 12, 2003, Respondent filed its response via facsimile.

5. On June 13, 2003, Complainant received the faxed response.

6. On June 16, 2003, Complainant received a hard copy of the original response and a copy of a corrected affidavit for Attorney W.C. Blanton.

7. Complainant will be materially prejudiced if it is not allowed to dispute the factual statements within Respondent's Brief in Opposition and to rebut Respondent's contentions regarding Supreme Court Rule 201(k) correspondence and discussions. Complainant

contends that Respondent has mischaracterized and misrepresented the Supreme Court Rule 201(k) communications and Complainant disputes the factual statements contained within the response. Complainant believes it will suffer material prejudice if not allowed to reply.

8. Further, with its response, Respondent filed a Withdrawal of Interrogatories, and thereby withdrew all contested interrogatories. In its withdrawal and response, Respondent contends that the question of its ability to propound additional interrogatories is now moot. This question is a new question, that has been raised upon the filing of the Respondent's withdrawal. Complainant believes that the question of Respondent's ability to propound additional interrogatories is not moot, particularly in light of the fact it has expressed a desire to "preserve its right" to direct further interrogatories to the State, and specifically states on page 2 of its withdrawal that it will, in the near future, seek leave of the Board to direct additional interrogatories to the State. The Complainant contends the question remains ripe as to (1) whether or not Respondent has the right to direct further interrogatories to the State, and if so, on what basis and under what conditions, and (2) in what manner it is to petition for leave to propound any additional interrogatories.

9. Complainant files its reply contemporaneously with this motion. In addition, Complainant also files a proposed protective order for the Hearing Officer's consideration and signature.

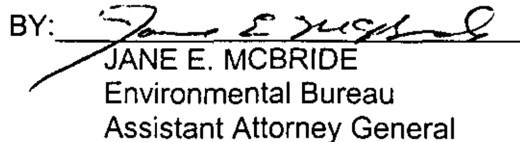
WHEREFORE, for the foregoing reasons, Complainant respectfully requests leave to file a reply to Respondent's brief in opposition to the state's motion for protective order.

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

500 South Second Street
Springfield, Illinois 62706
Dated: June 19, 2003

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v.	)	**PCB NO. 99-134**
	)	**(Enforcement)**
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR PROTECTIVE ORDER

NOW COMES, Complainant, PEOPLE OF THE STATE OF ILLINOIS, and replies to Respondent's Brief in Opposition to State's Motion for Protective Order, as follows:

Introduction

Pursuant to a Motion for Leave to File a Reply, Complainant seeks this opportunity to dispute the factual statements within Respondent's Brief in Opposition and to rebut Respondent's contentions regarding Supreme Court Rule 201(k) correspondence and discussions. The People have sought a protective order from the Hearing Officer regarding Respondent's third through sixth sets of interrogatories and fourth through seventh sets of requests for production of documents. Pursuant to its Withdrawal of Interrogatories, Respondent states that the question of its ability to propound additional interrogatories is moot. Complainant believes that the question of Respondent's ability to propound additional interrogatories is not moot. The Hearing Officer's Order should address the question of Respondent's ability to and the manner in which it may propound any additional interrogatories in order to resolve this discovery dispute.

Discussion

Respondent has organized its discussion as follows: (1) the parties Rule 201(k) discussions, (2) the Respondent's claim that the question of the Respondent's ability to and the

manner in which it may propound additional interrogatories is moot, (3) the Respondent's claim that the People have no basis for their objection to the fourth through seventh sets of requests for production; and (4) the Respondent's claim that the fourth through seventh sets of requests seek information and documents subject to discovery. Complainant hereby replies to the arguments set forth by the Respondent, systematically, within a similar organizational structure.

I. Rule 201(k) Discussions

The most serious points of contention regarding Rule 201(k) are Respondent's characterization and representation of the phone and meeting discussions. However, at the outset, Complainant acknowledges a prior agreement with Respondent concerning the previously conducted discovery. Such "agreement" was merely a consensus achieved through verbal discussions relating only to the previously conducted discovery; neither party waived or limited its right to challenge discovery requests on the substantive grounds of undue burden, harassment and so forth. This was done in good faith pursuant to Rule 201(k) in a reasonable attempt to resolve differences between the parties and to avoid seeking intervention by the Hearing Officer pursuant to Section 101.616(d). However, the agreement between Complainant and Respondent was not intended by either party to bind the parties beyond scope of the previously conducted discovery.

Regarding the newly served discovery requests, Respondent represents that counsel for the Complainant declined to discuss (1) whether Respondent's requests seek relevant information to the case and information that may lead to relevant information, and (2) whether the requests constitute reasonable and appropriate means of obtaining information. Further, Respondent characterizes Complainant's counsel's efforts to bring co-counsel into the discussion as focal to the ability to discuss the requests. Counsel for the Complainant wholly disagrees with these characterizations and states that such characterizations are a misrepresentation.

Lead counsel for the Complainant, Jane McBride, did not decline to discuss any aspect of the discovery requests. Respondent called Ms. McBride on June 4, 2003, to object to Complainant's method of disputing the discovery requests. This discussion centered upon the dispute and not the requests themselves, but Ms. McBride did not decline to discuss any aspect of the requests. Counsel for the Respondent insisted that they were not willing to withdraw any of the requests, nor were they willing to modify them in any manner. Counsel for Respondent offered no alternative other than for the Complainant to respond to the interrogatories and requests exactly as propounded. Counsel for the Respondent wholly placed the burden of objecting to the interrogatories and seeking further justification for the interrogatories upon the Complainant, and repeatedly refused to voluntarily narrow the requests or in any other manner to eliminate the expansiveness and duplicative nature of the requests. Ms. McBride reiterated that the interrogatories and requests were duplicative, burdensome and overly broad given that the Respondent had already propounded 47 interrogatories as well as broad and expansive production requests to which the Complainant had responded. The parties agreed to meet along with Ms. McBride's Bureau Chief, Thomas Davis, and Steve Ewart of the Illinois EPA. Respondent's statements, found on page 4 and 6 of its Brief in Opposition, that the State has made no reasonable effort to comply with Rule 201(k) is wholly inaccurate.

Respondent has also mischaracterized the June 10, 2003, meeting in its Brief in Opposition. At no time did Ms. McBride or Mr. Davis decline or refuse to discuss whether or not the discovery requests concerned information subject to discovery or were reasonable means of obtaining such information. In fact, counsel for the Complainant expressed that a discovery request of this nature and size was an unreasonable means of obtaining such information due to the duplicative nature of the requests and questioned whether the information sought is subject to discovery. Ms. McBride specifically asked Respondent's counsel to justify the sixth set of requests; *see* group Exhibit A to Complainant's motion. An example of these requests of

follows:

> Request No. 6.: All documents relating to an alleged exceedance of a Part 620 Standard allegedly caused by operations conducted at facilities other than the Mine, including all documents that evidence any action take by the State after learning of such alleged exceedances.

Such a request appears to seek all documents in Illinois EPA and other agency files regarding an alleged exceedance of the Part 620 standards at any facility, except the Eagle No. 2 Mine, within the boundaries of the State for all time, plus all documents that contain any information regarding actions taken regarding any such allegation. At the June 10th meeting, Respondent refused to narrow this request, along with the 25 other requests of a similar nature contained in the sixth set of requests. Counsel for Respondent indicated they felt this request was justified.

Early in the day of the June 10, 2003, meeting, Complainant received, via facsimile, a cover letter and list attached hereto as Exhibit C. The letter seemed to indicate that the Respondent was prepared to identify discovery requests PCC was willing to withdraw "at this time in light of the Board's recent ruling on the State's motion to strike PCC's affirmative defenses . . . " Based on this statement, counsel for the Complainant expected Respondent to withdraw a significant portion of the requests having their basis in the affirmative defenses. Instead, shortly after the meeting got underway, counsel for the Respondent indicated they had changed their mind since the letter was drafted and sent and that they were not willing to withdraw any of the requests.

In its Brief in Opposition, Respondent represents that both Mr. Davis and Ms. McBride had not read the requests at the time the Motion for a Protective Order was drafted. This is not true, and is a misrepresentation of the statements made in the June 10, 2003 meeting. As lead counsel, Ms. McBride certainly had read the requests at the time the requests were received. Mr. Davis' comments about the requests concerned the multitude of individual requests, and

was in the context that he had not studied every individual request and did not necessarily want to go through the requests one by one initially, but try to discuss the requests in terms of concepts. Ms. McBride's comments about reading the requests was made in the context of the list that was presented with the June 10, 2003, letter and in regard to discussions on the subject matter of the requests, particularly regarding Mr. Blanton's statement that the last set of requests was merely a reiteration of the Complainant's own discovery requests. Ms. McBride explicitly stated that in the last 24 hours she had thoroughly read each of the Respondent's requests and that the characterization in the list and the statement that these were identical requests to the Complainants was not accurate or complete. In fact, that very morning, given the list was supplied by the Respondent, Ms. McBride had again gone through all the requests to compare them with the characterization in the list.

The list provided Complainant on June 10, 2003, is similar to the list attached to Respondent's Brief in Opposition. Complainant believes that the list is an over generalization of the subject matter of the requests. The requests seek a huge expanse of information, much of which is beyond the generalizations stated by Respondent.

Further, with regard to Respondent's statement that the seventh set of requests is merely a reiteration of requests propounded to Respondent, Complainant asked Respondent to justify such a request, particularly given the total number of requests that have been propounded since the litigation began and the expansive nature of previous requests. Complainant posed this question in the context of the requests No. 6, 7 and 9, of the seventh set. Further, Complainant objected to requests of this nature in that these requests, supposedly justified on the basis that they were similar to requests propounded by the Complainant to the Respondent, appeared to seek to have the Complainant once again make available all documents in the files of various state agencies:

Request No. 6: All documents that contain information regarding correspondence and

communications between PCC and the Illinois State Geological Survey regarding Permit #34.

Request No. 7: All documents that contain information regarding correspondence and communications between PCC and the Illinois State Water Survey regarding Permit #34.

* * *

Request No. 9: All documents that contain information regarding correspondence and communications between PCC and OMM or its predecessor agencies regarding coal mining refuse handling and disposal at the Mine.

Discovery requests are not legitimate and justified merely because they are similar to requests previously propounded by the opposing party. Further, at this stage in the litigation, such requests will result in one party producing documents provided by the other party as a response to the original party's requests for production. It becomes nothing less that a vicious circle of producing the same documents. Such requests clearly constitute harassment and entail unnecessary expense.

As stated in Complainant's Motion for Protection Order, one reason for a protective order is, as provided for pursuant to Section 101.616(d) of the Board's procedural rules, to expedite resolution of the proceeding. A great deal of written discovery had already been completed as of May 27, 2003, the date the Respondent's third through seventh requests were received. There had already been an order issued by the Hearing Officer setting a discovery schedule and noting that the litigation was to be expedited given that the case had been filed in 1999. Hearing Officer Orders of April 3, 2003 and April 28, 2003. Even with the Respondent's withdrawal of the newly propounded four sets of interrogatories, the newly propounded requests for production are numerous, duplicative and expansive in nature, and, as such, are an obstacle to the expedition of this litigation.

II. Respondent's Claim that the Complainant's Motion is Moot as to PCC's Third Through Sixth Sets of Interrogatories.

The Complainant's motion is not moot with regard to interrogatories. Given that the

Respondent has expressed a desire to "preserve its right" to direct further interrogatories to the State, and specifically states on page 2 of its withdrawal that it will, in the near future, seek leave of the Board to direct additional interrogatories to the State, the question remains ripe as to (1) whether or not Respondent has the right to direct further interrogatories to the State, and if so, on what basis and under what conditions, and (2) in what manner it is to petition for leave to propound any additional interrogatories. With this reply, Complainant submits a proposed order for the Hearing Officer's consideration and signature.

III. Respondent's Claim that the Complainant has No Basis for Its Objection to the Fourth Through Seventh Sets of Requests for Production.

With the withdrawal of its third through sixth sets of interrogatories, Respondent's arguments now solely focus on its newly propounded sets of requests for production and divides its argument into four segments.

First, PCC relies on the "instruction" included with its requests. This instruction, provided with no basis in law, indicates that PCC's intention is not to seek documents that have previously been provided. This begs the question, then why has PCC devoted so many new requests to asking for documents that have already been produced. With a little bit of effort on its part, rather than shifting the burden to the Complainant, it should have reviewed the documents already in its possession and narrowed its request instead of indicating what its "intention" is. Then further down in the "instruction," Respondent states that "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." There is no reason to even include this "instruction" if it did not already fully realize these additional requests were improper, unduly burdensome, and something that could be viewed as harassment and the cause of undue expense.

The second segment of its response relies on Mr. Davis' expressed concern that the witness disclosures recently submitted by Ms. McBride to the Respondent are likely responsive to a number of the new requests. The timing of the new requests is curious. Why did Respondent wait to serve the new requests until after the disclosures were due? The new requests were sent on the date the disclosures were due. Requests contained within the fourth set of requests specifically ask for documents associated with the identification and disclosure of witnesses. The same was true regarding individual interrogatories contained within the third set of interrogatories. It would make sense that the Respondent would wait to see the content of the disclosures before propounded additional discovery. But rather, Respondent submits numerous, duplicative, expansive requests and repeatedly attempts to shift the burden of justifying the requests to the Complainant.

Respondent's third segment of this claim again concerns Rule 201(k). Respondent states that no discovery dispute exists to which the rule might be applied. Attempts have been made to discuss the disputed requests, but the State's reasonable attempts to resolve these differences have failed. Respondent again attempts to shift the burden to justify its discovery requests from itself to the Complainant. It characterizes the number of duplicative requests within the newly propounded requests, both as compared to the requests contained within the new sets and also as compared to previously propounded requests as "few." Complainant contends this is a gross mischaracterization.

Further, Respondent characterizes the Third Amended Complaint as "substantially modified" from the Complainant's original complaint. Complainant filed for leave to amend its original complaint in May of 2000. The proposed amended complaint was filed at the same time as the motion for leave to amend. The complaint was originally amended on the Complainant's own motion and voluntarily based on information that had become available in the course of discovery. The complaint was not amended again until after the Board's ruling on

the Respondent's motion to dismiss. The second amended complaint was filed in July of 2002. Complainant contends that the changes made in the complaint, particularly since May of 2000, have not been substantial and believes the Respondent's statement to the contrary to be a mischaracterization.

Respondent's fourth segment consists of its statement that the Complainant has made no effort to demonstrate that responding to Respondent's newly propounded requests would cause the State unreasonable expense, or that they constitute harassment, or that a protective order is justified on the basis of the need to expedite resolution of this case. To the contrary, Complainant has not only stated such, but the best evidence with regard to each basis are the requests themselves, particularly compared to the previously propounded requests. The requests have been provided and incorporated as exhibits to the motion. The best argument to be made in support of the contention that the requests constitute harassment, undue expense and delay, is to read each and every individual request and compare it to previously propounded requests, in the context that the Complainant has met and complied with all of the previously propounded requests.

IV. Respondent's Claim that the Requests Seek Information and Documents That Are Subject to Discovery.

Respondent sets forth "five primary issues" in this case that are purportedly addressed by the PCC Production Requests. However, Respondent simply reformulates many of its stricken affirmative defenses, and also places emphasis on certain questions that may, in actuality, be nothing more than smoke screens.

The "five primary issues" are not the only basis for the requests, nor do they generally constitute the only information sought to be elicited by these requests. Respondent's statement that "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," is a mischaracterization with regard to the "primary issues" reference, but a complete truth with regard to the reference to "loose ends matters". Respondent's fourth through seventh sets of production requests are a fishing expedition requiring a huge expenditure of resources and time, that, at this stage of the litigation, wherein a large amount of written discovery has already taken place, can be considered nothing other than harassment.

Another factor that might be at work with this newly propounded set of requests, is the fact that Mr. Blanton took over as lead attorney for the Respondent midway through the litigation. Complainant even received a letter to this effect, attached hereto as Exhibit D. Mr. Hedinger issued all of the original requests. Mr. Blanton appears to be primarily responsible for the newly propounded requests in an effort to completely re-conduct discovery now that he has gained control and responsibility for the matter, and perhaps has new or additional theories and defenses. There is no justification for the Complainant to be subject to repetitive, duplicative and expansive requests that appear to be the result of the shift of responsibility between the two defending attorneys.

Respondent also attempts to justify its statement that its requests are legitimate because they seek information customarily subject to discovery by characterizing 22 of them as request originally propounded to the Respondent by the Complainant. This argument was thoroughly discussed above. Secondly, Respondent characterizes 40 requests as requests seeking documents regarding the five inorganic constituents for which the Complainant has cited exceedances of the water quality and groundwater standards. Respondent states that these 40 requests "perhaps give the impression that responding to these requests involves five times the effort that is really the case." These requests have been provided with Complainant's motion and the information sought by each and the validity of these requests can be adjudged by reading them. Finally, the Respondent specifically characterizes eight of the requests as

"'loose ends' catchers" that are "completely standard practice" and solely relevant to interrogatories. If they are relevant to interrogatories, they should be withdrawn, as were all the new sets of interrogatories. If they are relevant to the old interrogatories, they are duplicative, because the same requests were propounded associated with formerly propounded interrogatories. Complainant has explicitly acknowledged its obligation to supplement its previous responses when additional information comes into its possession,

WHEREFORE, for the reasons and grounds stated above, Complainant respectfully requests that its Motion for Protective Order be granted.

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

500 South Second Street
Springfield, Illinois 62706
Dated: June 19, 2003

LAW FIRM

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

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

June 10, 2003

VIA FACSIMILE

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

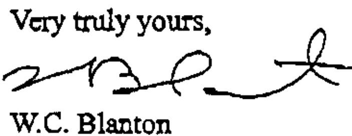
Re: People of the State of Illinois v. Peabody Coal Company
PCB Case No. 99-134
Our File No. 2597-3

Dear Jane:

Attached for the use of the State representatives who will be participating in our meeting this afternoon is a document that identifies the issues presented in this case to which the PCC discovery requests in dispute are directed, identifies which of those discovery requests PCC withdraws at this time in light of the Board's recent ruling on the State's motion to strike PCC's affirmative defenses, and provides some additional comments as to some of the discovery requests.

Best regards –

Very truly yours,



W.C. Blanton

WCB/kmy
Attach.

Exhibit C

cc: Stephen Hedinger (w/attach.) (via facsimile)
David Joest (w/attach.) (via facsimile)

KC-1091654-1

ISSUES ADDRESSED BY DISCOVERY REQUESTS

Discovery Requests	Issues Addressed
	Third Set of Interrogatories
1	Standard
2 – 4	Standard
5	Standard
6	Basic
7 – 13	Whether Counts II and III have been brought by the AG on his/her own behalf, as alleged by the State
	Fourth Set of Production Requests
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	Basic
16 – 17	Standard
18	Self-evident
19	Standard
20	Self-evident (Exhibit to be provided)
21	Self-evident (Exhibit to be provided)
	Fourth Set of Interrogatories
1	Standard
2 - 8	Seriousness of alleged violations
9 – 14	Impact on the aquifer
15 - 20	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations; appropriate penalty
21 - 29	Whether "water pollution" or "water pollution hazard" has occurred; seriousness of alleged violations; appropriate penalty
30	Seriousness of alleged violations
	Fifth Set of Production Requests
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

Fifth Set of Interrogatories

1	Standard
2 - 11	Appropriate penalty
12 - 13	Appropriate penalty
14 - 15	Appropriate penalty
16 - 17	Appropriate penalty; will limit to info regarding GMZs
18	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations; appropriate penalty

Sixth Set of Production Requests

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

Sixth Set of Interrogatories

1	Standard
2 - 15	Same (and all) issues as to which the information sought has been deemed relevant by the State by its corresponding interrogatories

Seventh Set of Production Requests

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; no intent to seek documents already produced

HEDINGER LAW OFFICE

Stephen F. Hedinger
1225 SOUTH SIXTH STREET
SPRINGFIELD, ILLINOIS 62703
TEL (217) 523-2753
FAX (217) 523-4366

August 22, 2002

VIA U.S.MAIL
Jane McBride
Attorney Generals Office
500 South Second Street
Springfield, IL 62706

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

Dear Jane:

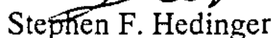
This letter is in confirmation of our telephone conversations of Tuesday of this week, August 20.

Effective immediately, the "point person" for the above-referenced litigation will be W.C. Blanton. His address and phone number are as follows: Blackwell Sanders Peper Martin LLP, Two Pershing Square, 2300 Main Street, Suite 1000, Kansas City, Missouri 64108. Direct: (816) 983-8151. Fax: (816) 983-8080.

I will continue to be actively involved in this case. However, Mr. Blanton will be the lead counsel for purposes of trial preparation, and he should be the primary point of reference for all litigation activities, inquiries and discussions.

Contact me, or Mr. Blanton, at your earliest convenience if you have any questions concerning this.

Very truly yours,



Stephen F. Hedinger

SFH/ew

Exhibit D

cc: W.C. Blanton
David Joest
Steve Ewart, IEPA, Division of Legal Counsel
Steve Langhoff, Hearing Officer

RECEIVED
CLERK'S OFFICE
JUN 2 4 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 99-134**
	)	**(Enforcement)**
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
Respondent.	)	

PROTECTIVE ORDER

Complainant's Motion for Protective Order is granted over objections by Respondent. Respondent's Withdrawal of Interrogatories is accepted and the third through sixth sets of interrogatories are stricken. 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. . . ." Regardless of any prior verbal agreement between the parties, the Hearing Officer finds that Respondent failed to seek leave to exceed the maximum number of interrogatories. The Hearing Officer finds that the production requests consisting of 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, must be denied as substantially duplicative of prior requests.

Pursuant to Section 101.616(d), and the findings by the Hearing Officer, the following conditions are imposed to limit and regulate discovery to prevent unreasonable expense, or harassment, and to expedite resolution of the proceeding:

Any party must in the future seek leave of the Hearing Officer and justify the need for additional interrogatories or document production requests in this matter prior to serving such interrogatories or document production requests upon the other party. The burden shall be on the proponent of the additional discovery to establish through a motion or brief that any

additional request is necessary to avoid material prejudice; the other party shall respond within 14 days; the proponent of the additional discovery may not seek to reply; and the ruling of the Hearing Officer will be subject to review by the Board if an appeal is timely sought.

IT IS SO ORDERED.

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

AFFIDAVIT

I, THOMAS DAVIS, after being duly sworn and upon oath, state as follows:

1. I am employed by the Illinois Attorney General's Office, as an Assistant Attorney General. Since September 1, 1991, I have served as the Bureau Chief of the Environmental Bureau/Springfield. Assistant Attorney General Jane McBride is assigned to the matter of *People v. Peabody Coal Company*, PCB 99-134, as lead counsel of and attorney of record for the Complainant in this matter. As the supervising attorney, and duly authorized by the Attorney General, I have executed all of the complaints filed before the Board and have participated as necessary in discussion and conferences.

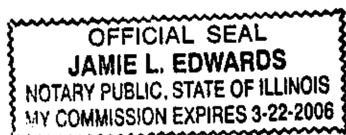
2. I am executing this Affidavit to accompany Complainant's Reply to Respondent's Brief in Opposition to the State's Motion for Protective Order.

3. The assertions set forth in Complainant's Reply to Respondent's Brief in Opposition to the State's Motion for Protective Order are true, correct and accurate, to the best of Affiant's knowledge and belief.

Further, Affiant sayeth not.

THOMAS DAVIS

Subscribed and sworn to before me
this 19th day of June, 2003.



NOTARY PUBLIC

OFFICIAL SEAL
JAMIE L. EDWARDS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-22-2006

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

AFFIDAVIT

I, JANE E. MCBRIDE, after being duly sworn and upon oath, state as follows:

1. I am the Assistant Attorney General assigned to the matter of *People v. Peabody Coal Company*, PCB 99-134, and counsel of record for the Complainant in this matter.

2. I am executing this Affidavit to accompany Complainant's Reply to Respondent's Brief in Opposition to the State's Motion for Protective Order.

3. The assertions set forth in Complainant's Reply to Respondent's Brief in Opposition to the State's Motion for Protective Order are true, correct and accurate, to the best of Affiant's knowledge and belief.

Further, Affiant sayeth not.

JANE E. MCBRIDE

Subscribed and sworn to before me
this 19th day of June, 2003.

NOTARY PUBLIC