

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 7 2003

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

STATE OF ILLINOIS  
Pollution Control Board  
PCB NO. 99-134  
(Enforcement)

NOTICE OF FILING

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

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


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

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, ANSWER TO RESPONDENT'S THREE REMAINING AFFIRMATIVE DEFENSES.

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: July 1, 2003

CERTIFICATE OF SERVICE

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CLERK'S OFFICE

I hereby certify that I did on July 1, 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 and ANSWER TO RESPONDENT'S THREE REMAINING AFFIRMATIVE DEFENSES

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

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Hedinger Law Office  
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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  
James R. Thompson Center, Ste. 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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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
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STATE OF ILLINOIS  
*Pollution Control Board*

PCB NO. 99-134  
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**ANSWER TO RESPONDENT'S THREE REMAINING AFFIRMATIVE DEFENSES**

NOW COMES, Complainant, PEOPLE OF THE STATE OF ILLINOIS, and as its answer to the Respondent's three remaining affirmative defenses, number 4, 5 and 6, states as follows:

**Fourth Affirmative Defense**

1. Respondent sets forth its fourth affirmative defense as follows:

For its fourth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred wholly or in part by the doctrine of laches, in that the State has for many years possessed full knowledge of all material aspects of both PCC's conduct at Eagle No. 2 and the consequences thereof complained of but has failed to address those matters in a timely fashion and PCC has been prejudiced thereby.

2. Complainant denies the allegations contained in Respondent's fourth affirmative defense.

**Fifth Affirmative Defense**

3. Respondent sets forth its fifth affirmative defense as follows:

For its fifth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred wholly or in part by the doctrine of waiver, in that PCC's conduct at Eagle No. 2 complained of in the Complaint was carried out in accordance with the terms and conditions of permits issued by agencies of the State that possessed full knowledge of all material aspects of both PCC's conduct that would be carried out pursuant to those permits and the consequences of that conduct complained of.

4. Complainant denies the allegations contained in Respondent's fifth affirmative

defense.

Sixth Affirmative Defense

5. Respondent sets forth its sixth affirmative defense as follows:

For its sixth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred wholly or in part by the doctrine of estoppel, in that PCC's conduct at Eagle No. 2 complained of in the Complaint was carried out in accordance with the terms and conditions of permits issued by agencies of the State that at the time of issuing such permits possessed full knowledge of all material aspects of both PCC's conduct that would be carried out pursuant to those permits and the consequences of that conduct complained of, PCC carried out the conduct complained of in reliance upon the State's issuance of those permits to PCC to its detriment, and the State knew at the time it issued those permits to PCC that PCC would rely upon the State issuing those permits in carrying out the conduct complained of.

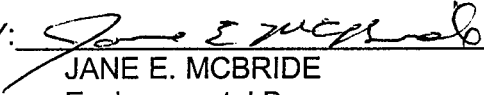
6. Complainant denies the allegations contained in Respondent's sixth affirmative defense.

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: July 1, 2003