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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 99-134
)
 PEABODY COAL COMPANY, a Delaware)
 corporation,)
)
 Respondent.)

ANSWER

Respondent, Peabody Coal Company ("PCC"), hereby answers the Third Amended Complaint ("Complaint") filed by Complainant, People of the State of Illinois ("State"), as follows:

ADMISSIONS AND DENIALS

PCC hereby sets forth its admissions and denials with respect the allegations set forth in the State's Complaint as follows:

As To Count I

1. PCC denies the allegations set forth in rhetorical paragraph 1 of Count I of the Complaint ("Count I").
2. Rhetorical paragraph 2 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

3. PCC denies the allegations set forth in rhetorical paragraph 3 of Count I. However, PCC admits that representatives of Illinois EPA and PCC have met regarding the water quality sampling results that are the subject of Count I.

4. PCC admits the allegations set forth in rhetorical paragraph 4 of Count I.

5. In response to the allegations set forth in rhetorical paragraph 5 of Count I, PCC admits the allegations set forth in the first sentence thereof and denies the allegations set forth in the second, third, fourth, fifth, and sixth sentences thereof. However, PCC acknowledges the following facts with respect to the matters that are the subject of said paragraph: PCC is a subsidiary of Interior Holdings Corporation, which is in turn a subsidiary of Peabody Holding Company, Inc. The surface portion of Eagle No. 2¹ is located in Sections 15, 16, and 21, Township 9 South, Range 9 East, Gallatin County, and covers approximately 250 acres. Eagle No. 2 was operated as an active underground coal mine in 1968 until July 1993, and reclamation activities at the mine have been ongoing thereafter. All operations at Eagle No. 2 have been carried out pursuant to permits issued by the Office of Mines and Minerals of the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency, or their respective predecessor regulatory agencies. Although Eagle No. 2's main offices are located at the mine, PCC's Midwest Business Unit has certain operational responsibilities for past and present activities at the mine.

6. In response to the allegations set forth in rhetorical paragraph 6 of Count I, PCC denies the allegations set forth in the second sentence thereof and is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in the first sentence thereof.

¹ All shortened terms used by PCC in this Answer have the same respective meanings as used by the State in its Complaint, except to the extent specifically defined otherwise by PCC herein.

7. In response to the allegations set forth in rhetorical paragraph 7 of Count I, PCC admits the allegations set forth in the second and (upon information and belief) third sentences thereof and is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in the first sentence thereof.

8. PCC denies the allegations set forth in rhetorical paragraph 8 of Count I. However, PCC acknowledges the following facts with respect to the matters that are the subject of said paragraph: From 1968 until July 1993, PCC constructed and operated the coal preparation plant at Eagle No. 2. As part of its operations at Eagle No. 2, PCC constructed or otherwise prepared disposal areas at the surface portion of the mine, including excavating trenches at some locations, and disposed of substantial quantities of gob and slurry in those areas. The coal mine refuse disposed of at Eagle No. 2 contains certain inorganic chemicals, some of which were present at the time of disposal and some of which were generated after disposal. The groundwater quality data of which PCC has knowledge indicate that sulfates present in this refuse have leached into on-site groundwater.

9. In response to the allegations set forth in rhetorical paragraph 9 of Count I, PCC denies the allegations set forth in the first, second, third, and fifth sentences thereof and is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in the fourth sentence thereof.

10. In response to the allegations set forth in rhetorical paragraph 10 of Count I, PCC admits the allegation set forth in the first sentence thereof that “[o]n January 28, 1997, the Illinois EPA sent the Respondent a Violation Notice Letter, Violation Notice: M-1997-00010” and denies the remaining allegations set forth in that sentence; admits the allegations set forth in the second sentence thereof; and admits the allegation set forth in the third sentence thereof that

“[o]n March 13, 1997, a meeting of representatives of the Illinois EPA and the Respondent was held” and denies the remaining allegations set forth in that sentence.

11. In response to the allegations set forth in rhetorical paragraph 11 of Count I, PCC admits the allegations set forth in the first, second, third, fifth, and sixth sentences thereof, admits the allegation in the fourth sentence thereof that the Illinois EPA sent PCC a letter on April 23, 1997, and denies the remaining allegations set forth in the fourth sentence thereof.

12. In response to the allegations set forth in rhetorical paragraph 12 of Count I, PCC admits the allegation that “[o]n December 23, 1997, the Illinois EPA sent the Respondent a second Violation Notice Letter, Violation Notice: M-1997-00133,” denies the remaining allegations set forth in the first sentence thereof, admits the allegations set forth in the third and fourth sentences thereof, and admits the allegations set forth in the second sentence thereof except to the extent that the letter that is the subject of that sentence is characterized as “questioning” rather than “disputing” the EPA characterization that is the subject of that sentence.

13. Rhetorical paragraph 13 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

14. Rhetorical paragraph 14 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

15. PCC denies the allegations set forth in rhetorical paragraph 15 of Count I under the heading “Permits/Authorities [and] Permit Modifications.” Rhetorical paragraph 15 of Count I

otherwise sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no other response thereto in the nature of admission or denial.

16. Rhetorical paragraph 16 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

17. Rhetorical paragraph 17 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

18. Rhetorical paragraph 18 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

19. Rhetorical paragraph 19 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

20. PCC denies the allegations set forth in rhetorical Paragraph 20 of Count I.

21. Rhetorical paragraph 21 of Count I sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

22. Rhetorical paragraph 22 of Count I sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

23. Rhetorical paragraph 23 of Count I sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

24. Rhetorical paragraph 24 of Count I sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

25. Rhetorical paragraph 25 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

26. Rhetorical paragraph 26 of Count I sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

27. Rhetorical paragraph 27 of Count I sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

28. PCC denies the allegations set forth in rhetorical paragraph 28 of Count I.

29. PCC denies the allegations set forth in rhetorical paragraph 29 of Count I.

30. To the extent that Count I contains any allegation of fact as to which PCC has not heretofore set forth either a specific admission, denial, or statement of lack of sufficient information or knowledge, PCC hereby denies each and every said allegation.

As to Count II

31. PCC denies the allegations set forth in rhetorical paragraph 1 of Count II of the Complaint ("Count II").

32. In response to rhetorical paragraphs 2 through 14, inclusive, of Count II, PCC hereby incorporates by reference as if fully set forth herein its responses to rhetorical paragraphs 4 through 9 and 13 through 19 of Count I as set forth in paragraphs 4 through 9 and 13 through 19 above.

33. Rhetorical paragraph 15 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

34. Rhetorical paragraph 16 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

35. Rhetorical paragraph 17 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

36. Rhetorical paragraph 18 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

37. Rhetorical paragraph 19 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

38. Rhetorical paragraph 20 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

39. Rhetorical paragraph 21 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

40. Rhetorical paragraph 22 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

41. Rhetorical paragraph 23 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

42. Rhetorical paragraph 24 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

43. Rhetorical paragraph 25 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

44. Rhetorical paragraph 26 of Count II sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

45. PCC denies the allegations set forth in rhetorical paragraph 27 of Count II.

46. Rhetorical paragraph 28 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

47. Rhetorical paragraph 29 of Count II sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

48. Rhetorical paragraph 30 of Count II sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

49. Rhetorical paragraph 31 of Count II sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

50. Rhetorical paragraph 32 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

51. Rhetorical paragraph 33 of Count II sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

52. Rhetorical paragraph 34 of Count II sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

53. PCC denies the allegations set forth in rhetorical paragraph 35 of Count II.

54. PCC denies the allegations set forth in rhetorical paragraph 36 of Count II.

55. To the extent that Count II contains any allegation of fact as to which PCC has not heretofore set forth either a specific admission, denial, or statement of lack of sufficient information or knowledge, PCC hereby denies each and every said allegation.

As to Count III

56. PCC denies the allegations set forth in rhetorical paragraph 1 of Count III of the Complaint ("Count III").

57. In response to rhetorical paragraphs 2 through 14, inclusive, of Count III, PCC hereby incorporates by reference as if fully set forth herein its responses to rhetorical paragraphs 2 through 14 of Count II as set forth in paragraph 32 above, thereby also incorporating by reference its responses to rhetorical paragraphs 4 through 9 and 13 through 19 of Count I as set forth in paragraphs 4 through 9 and 13 through 19 above.

58. In response to rhetorical paragraph 15 of Count III, PCC hereby incorporates by reference as if fully set forth herein its response to rhetorical paragraph 20 of Count I as set forth in paragraph 20 above.

59. In response to rhetorical paragraphs 16 through 28, inclusive, of Count III, PCC hereby incorporates by reference as if fully set forth herein its responses to rhetorical paragraphs 15 through 27, inclusive, of Count II as set forth in paragraphs 33 through 45, inclusive, above.

60. Rhetorical paragraph 29 of Count III sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

61. Rhetorical paragraph 30 of Count III sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

62. Rhetorical paragraph 31 of Count III sets forth no allegations of fact but rather constitutes a legal conclusion. Therefore, PCC makes no response thereto in the nature of admission or denial.

63. In response to rhetorical paragraphs 32 through 38, inclusive, of Count III, PCC hereby incorporates by reference as if fully set forth herein its response to rhetorical paragraphs 28 through 34, inclusive, of Count II, as set forth in paragraphs 46 through 52, inclusive, above.

64. Rhetorical paragraph 39 of Count III sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

65. PCC denies the allegations set forth in rhetorical paragraph 40 of Count III.

66. PCC denies the allegations set forth in rhetorical paragraph 41 of Count III.

67. PCC denies the allegations set forth in rhetorical paragraph 42 of Count III.

68. Rhetorical paragraph 43 of Count III sets forth no allegations of fact but rather consists of legal conclusions. Therefore, PCC makes no response thereto in the nature of admission or denial.

69. PCC denies the allegations set forth in rhetorical paragraph 44 of Count III.

70. PCC denies the allegations set forth in rhetorical paragraph 45 of Count III.

71. PCC denies the allegations set forth in rhetorical paragraph 46 of Count III.

72. PCC denies the allegations set forth in rhetorical paragraph 47 of Count III.

73. To the extent that Count III contains any allegation of fact as to which PCC has not heretofore set forth either a specific admission, denial, or statement of lack of sufficient information or knowledge, PCC hereby denies each and every said allegation.

AFFIRMATIVE DEFENSES

PCC hereby sets forth its affirmative defenses to Counts I, II, and III as follows:

74. For its first affirmative defense to Counts I, II, and III, and each of them, PCC states that this Board is wholly or in part without jurisdiction to entertain the State's claims against it

pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1), in that the State did not issue and serve notice upon PCC within 180 days after the State possessed full knowledge of all material aspects of both PCC's conduct and the consequences thereof complained of, as required by said statutory provision.

75. For its second 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 limitations provision of Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1), in that the enforcement process under Section 31 of the Act was initiated by the State more than 180 days after the State possessed full knowledge of all material aspects of both PCC's conduct and the consequences thereof complained of.

76. For its third 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 generally applicable statute of limitations, 735 ILCS 5/13-205, in that this proceeding was initiated by the State more than five years after the State possessed full knowledge of all material aspects of both PCC's conduct and the consequences thereof complained of.

77. 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.

78. 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.

79. 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.

80. For its seventh 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 State's failure to join a party necessary for a complete and just adjudication of the matters that are the subject of Complaint, i.e., the Saline Valley Conservancy District, which installed its production wells in such locations and operated them in such a manner as to cause and/or contribute to the presence of certain substances at locations in the groundwater in the vicinity of Eagle No. 2 complained of.

81. For its eighth 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 "permit shield" provisions of Section 12(f) of the Act, 415 ILCS 5/12(f), to the extent that the State contends that

(a) violations of applicable groundwater quality standards and/or (b) “water pollution” have been caused by water discharged from Outfall 1 at Eagle No. 2 into the unnamed ditch located between Outfall 1 and Cypress Ditch thereafter entering the groundwater in the vicinity of the mine, in that some or all of such discharges have been carried out pursuant to the terms of an NPDES permit.

82. For its ninth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State’s claims against it are barred by the due process clauses of the United States Constitution and the Illinois Constitution to the extent that such claims attempt to impose retroactive liability upon PCC for conduct at Eagle No. 2 and/or consequences of such conduct that was lawful in all respects at the time such conduct occurred.

83. For its tenth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State’s claims against it are barred by the equal protection clauses of the United States Constitution and the Illinois Constitution to the extent that such claims attempt to impose obligations upon PCC and/or to deny relief to PCC in a discriminatory manner with respect to the State’s application of certain statutes and regulations as compared to its application of those laws to other parties similarly situated as PCC with respect to the matters that are the subject of such claims.

84. For its eleventh 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 State’s failure to either fully or materially comply with the procedural prerequisites of such claims established by Section 31(a) and (b) of the Act, 415 ILCS 5/31(a) and (b).

85. For its twelfth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State’s claims against it are barred to the extent that the State has previously

undertaken and completed enforcement action against PCC with respect to PCC's conduct and the consequences thereof that are the subject of this proceeding generally and with respect to certain alleged violations of the Act and/or this Board's regulations that the State has asserted in this proceeding specifically.

86. For its thirteenth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred to the extent that the State bases those claims upon the presence of chlorides, sulfates, and total dissolved solids in the groundwater located at and in the vicinity of Eagle No. 2, for the reason that this Board exceeded its authority in promulgating 35 Ill. Adm. Code § 620.410(a), to the extent that this regulation purports to establish groundwater quality standards for those substances, because those substances have not reasonably been determined to cause and/or there is no reasonable basis to suspect that those substances cause cancer, birth defects, or any other adverse effect on human health according to nationally accepted guidelines, as required by Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 5/8(a).

87. For its fourteenth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred to the extent that the State bases those claims upon the contention that the presence of substances that have been released into the groundwater located at and in the vicinity of Eagle No. 2 from any area at the time at which coal mine refuse was disposed of violates certain regulations set forth at 35 Ill. Adm. Code, Part 620, for the reason that this Board exceeded its authority in promulgating those regulations, in that the Board did not in connection with promulgating those regulations take into account the relevant existing physical conditions or the technical feasibility and economic reasonableness of reducing the

particular type of pollution addressed by those regulations as required by Section 27(a) of the Act, 415 ILCS 5/27(a).

88. For its fifteenth affirmative defense to Counts I, II, and III, and each of them, PCC states that the State's claims against it are barred by the due process clauses of the United States Constitution and the Illinois Constitution to the extent that such claims attempt to impose liability upon PCC for conduct at Eagle No. 2 and/or consequences of such conduct that was not unlawful at the time the State initiated this proceeding.

89. For its sixteenth 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 because Illinois EPA has arbitrarily, capriciously, and unlawfully failed to establish a groundwater management zone with respect to the groundwater located at and in the vicinity of Eagle No. 2 pursuant to PCC's submission of a corrective action process plan to Illinois EPA, as required by 35 Ill. Adm. Code § 620.250.

REQUEST FOR RELIEF

For the reasons stated above, PCC respectfully requests this Board to enter an order against the State:

- A. Denying all of the claims asserted by the State against PCC herein;
- B. Finding that PCC has not violated either the Act or any regulation as alleged by the State;
- C. Awarding PCC its costs and attorneys' fees incurred in defending this matter; and
- D. Granting PCC all further appropriate relief.

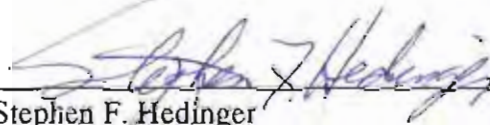
Date: December 20, 2002.

PEABODY COAL COMPANY

By its attorneys



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