

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:
PEOPLE OF THE STATE OF)
ILLINOIS)
)
Complainant,)
)
v.) PCB 2010-061
) (Enforcement-Water)
FREEMAN UNITED COAL)
MINING CO., L.L.C., and)
SPRINGFIELD COAL CO., L.L.C.)
)
Respondents.)

NOTICE OF ELECTRONIC FILING

TO:

Thomas Davis
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

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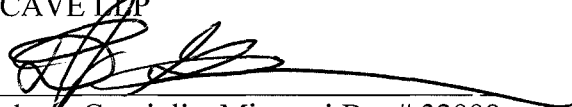
Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago, IL 60601

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
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PLEASE TAKE NOTICE that on April 2, 2010, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., L.L.C.'s Reply to the Environmental Law & Policy Center's Reply to Springfield Coal's Response to ELPC's Motion for Leave to Intervene, copies of which are herewith served upon you.

BRYAN CAVE LLP

By:


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MOTION FOR LEAVE TO REPLY TO THE ENVIRONMENTAL LAW & POLICY CENTER'S REPLY TO SPRINGFIELD COAL'S RESPONSE TO THE ENVIRONMENTAL LAW & POLICY CENTER'S MOTION FOR LEAVE TO INTERVENE ON BEHALF OF PRAIRIE RIVERS NETWORK AND SIERRA CLUB, ILLINOIS CHAPTER

COMES NOW Springfield Coal Co., L.L.C. ("Springfield Coal"), by and through its attorneys, hereby files a MOTION FOR LEAVE TO REPLY to the Environmental Law and Policy Center's ("ELPC") Response dated March 25, 2010. In support of this motion, Springfield Coal states the following:

1. ELPC has misinterpreted the Board procedural rules with regard to the deadline for when Springfield Coal's Response to ELPC's Motion to Intervene was required to be filed, when service is effectuated, as well as other procedural rules regarding the need for affidavits. Springfield Coal would be unduly prejudiced by an inability to correct ELPC's misunderstanding of the timeline of events and applicable rules.

Wherefore, Springfield Coal respectfully requests that the Board GRANT its MOTION FOR LEAVE TO REPLY and file the attached Reply to the Environmental Law and Policy Center's Motion for Leave to Reply and Reply.

Respectfully Submitted,

BRYAN CAVE LLP

By:



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Co., L.L.C

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SPRINGFIELD COAL CO., L.L.C.)

Respondents.)

**RESPONSE TO THE ENVIRONMENTAL LAW & POLICY CENTER’S MOTION FOR
LEAVE TO INTERVENE ON BEHALF OF PRAIRIE RIVERS NETWORK AND
SIERRA CLUB, ILLINOIS CHAPTER**

COMES NOW Respondent, SPRINGFIELD COAL COMPANY, L.L.C. (“Springfield Coal”) by and through its attorneys, and pursuant to 35 Ill. Admin. Code § 101.500(d) and 101.504, hereby respectfully responds to the Environmental Law & Policy Center’s (“ELPC”) Reply to Springfield Coal’s Response to ELPC’s Motion for Leave to Intervene (“Motion to Intervene”) on behalf of Prairie Rivers Network (“PRN”) and Sierra Club, Illinois Chapter (“Sierra Club”, collectively, “Movants”). Springfield Coal requests that the Illinois Pollution Control Board (“Board”) enter an order denying Movants’ request to intervene in the above matter. In support of this request, Springfield Coal states as follows:

1. In its Reply, ELPC claimed that Springfield Coal did not file a timely response to ELPC’s Motion to Intervene. Springfield Coal received ELPC’s Motion to Intervene on March 1, 2010. Attached as Exhibit A is the tracking sheet from the United States Postal Service (“USPS”) for the delivery to Springfield Coal of ELPC’s Motion to Intervene via certified mail.

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Also attached as Exhibit B is the envelope in which ELPC's Motion to Intervene was delivered to Springfield Coal. Both the USPS tracking sheet and the envelope bear the same certified mail number: 7006 0810 0004 6798 4334. The USPS tracking sheet clearly shows that the Motion to Intervene was delivered to Springfield Coal on March 1, 2010. Pursuant to 35 Ill. Admin. Code 101.500(d), Springfield Coal had fourteen days from the date of service to respond to ELPC's motion. Fourteen days from March 1, 2010 is March 15, 2010, the date upon which Springfield Coal filed its response to ELPC's motion.

2. 35 Ill. Admin. Code 101.300(c) sets forth that service is effectuated:

Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d) of this Part). *In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt.* In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof. (emphasis added)

Springfield Coal received ELPC's Motion to Intervene on March 1, 2010. Therefore, service was effectuated on March 1, 2010.

3. ELPC has mischaracterized the service requirements contained in 35 Ill. Admin. Code 101.300(c). ELPC is mistaken with regard to what it believes to be the "receipt" for purposes of certified mail. ELPC appears to believe that the "date specified on the registered or certified mail receipt" is the receipt that ELPC received when paying to mail the pleading at the post office. Such a notion is contrary to the rule. The receipt referred to in the rule is the receipt sent when the document is actually received by the party to be served. Otherwise, the rule would be grossly inconsistent and unfair.

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4. All other methods of service described in the above rule are effective when the pleading is received by the person being served. Personal service is only completed when delivered. Facsimile transmission is only completed on the date of a proper and complete transmittal, implying that the person being served has received the document. U.S. Mail service is presumed complete four days after mailing—a presumption that may be rebutted by evidence that it took longer than four days for the pleading to reach the intended party. Though certified or registered mail is more reliable than first class mail, neither is sufficiently superior nor reliable to justify a standard that the pleading is served when sent. To allow an entity to remove three days from the response time mandated by 35 Ill. Admin. Code 101.500(d) simply by their choice of service method constitutes material prejudice against the party being served. Moreover, under ELPC's interpretation of the rule, if a motion would get lost in the mail for two weeks, the deadline to respond for the party receiving the motion would already have passed. This is an absurd result and absurd interpretation being taken by the ELPC.

5. ELPC asserts in its Reply that its intervention in this case will not delay this proceeding. However, the mere fact that Springfield Coal is now forced to take the time to prepare and file this Reply in order to correct ELPC's clear mischaracterization of the Board's procedural rules is evidence enough of the delay that the ELPC will cause to this proceeding.

6. Despite the information in ELPC's Reply, ELPC's Motion to Intervene remains deficient. Springfield Coal directs the Board's attention to 35 Ill. Admin. Code 101.504, which notes that, "All motions and responses must clearly state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]." ELPC has

not provided any such supporting documentation. Furthermore, although ELPC maintains that it has repeatedly stated the ways that denying intervention in this case would result in material prejudice, neither the Motion to Intervene nor the Reply offer any compelling reasons as to why ELPC would be materially prejudiced should they use other means of non-party participation in the case (*amicus curiae* briefs, submittal of written or oral testimony to the Board), or are in a unique position that somehow differs from the People of Illinois at large. Absent this showing, ELPC simply has not established that it is entitled to intervene in this matter.

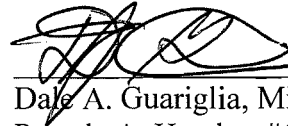
7. Springfield Coal's objections and arguments with regard to substantive issues raised by ELPC in its reply are contained in Springfield Coal's initial Response to the Motion to Intervene.

WHEREFORE, for the reasons set forth above Respondent, SPRINGFIELD COAL COMPANY, L.L.C. respectfully requests that the Motion For Leave to Intervene by the Prairie Rivers Network and the Sierra Club, Illinois Chapter, be DENIED.

Respectfully Submitted,

BRYAN CAVE LLP

By:



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing response was served upon the following parties via U.S. Mail on the 2nd day of April, 2010:

Thomas Davis
Assistant Attorney General
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Carol Webb
Hearing Officer
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Jessica Dexter
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Chicago, IL 60601

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

A handwritten signature in black ink, appearing to be "John Therriault", written over a horizontal line.



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Label/Receipt Number: **7006 0810 0004 6798 4334**

Service(s): **Certified Mail™**

Status: **Delivered**

Your item was delivered at 6:00 AM on March 1, 2010 in CHICAGO, IL 60601.

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- **Arrival at Pick-Up-Point, February 27, 2010, 11:30 am, CHICAGO, IL 60601**

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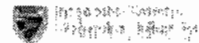
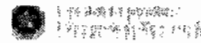



Exhibit A



ENVIRONMENTAL LAW & POLICY CENTER
35 East Wacker Drive, Suite 1300 Chicago, Illinois 60601-2110

100% Post Consumer Waste

Bryan Ake

Springfield Coal Company, LLC
BCRA Co. R.A.
161 N. Clark Street Suite 4300
Chicago IL 60601

RECEIVED

Exhibit B