

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
HERITAGE COAL COMPANY, L.L.C.)
(f/k/a PEABODY COAL COMPANY, L.L.C.))
Respondent.)

PCB No. 99-134
(Enforcement – Water)

RESPONDENT'S MOTION FOR ADDITIONAL ENLARGEMENT OF TIME
TO FILE MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, HERITAGE COAL COMPANY, L.L.C. (f/k/a PEABODY COAL COMPANY, L.L.C.), through its undersigned attorney, and moves this Board through its hearing officer for an additional enlargement of time within which to submit the anticipated motion for partial summary judgment in this case. In support of this motion, Respondent states as follows:

1. At the status conference in this case on August 26, 2010 the parties advised the hearing officer of Respondent's intention to file a motion for partial summary judgment addressed to certain issues in this case. At that time, the parties proposed a briefing schedule for the motion for partial summary judgment, which was set forth in the hearing officer's order of August 27, 2010.
2. On October 27, 2010, the parties reached agreement on an enlargement of the briefing schedule for the proposed motion for partial summary judgment, and informed the hearing officer of that proposal. The proposed extension was adopted by the hearing officer's order of October 28, 2010. Pursuant to that order, the motion for summary judgment should be

filed by November 19, 2010, and Complainant's response and Respondent's reply were given deadlines, as well.

3. Counsel for Respondent has diligently addressed the drafting, research and file review necessary for the anticipated motion for partial summary judgment and is currently working on a draft of the motion. Despite those diligent efforts, however, counsel at this time requests an additional extension and enlargement of the time set aside for the filing of the motion. Specifically, counsel for Respondent requests that the motion be due to be filed on or before December 20, 2010, that any response be filed by January 20, 2011, and any reply be filed by February 10, 2011. This proposal will have the effect of expanding the briefing schedule by approximately 30 days from the current schedule.

4. This request for enlargement is being made due primarily to the workload currently faced by counsel for Respondent. In particular, Respondent's lead counsel, W.C. Blanton, who is primarily responsible for compiling information, researching and drafting the proposed motion, is deeply involved in a time sensitive and highly complex and complicated matter involving permitting issues for a proposed new power plant (not located in Illinois). In addition, Mr. Blanton has personal responsibilities, and in particular a move of his residence, that is scheduled to occur in early December and is requiring his attention at this time. These matters were not foreseen when the original briefing schedule was adopted, and in particular the scope of the power plant project was unanticipated, as was the sale of the residence necessitating the move.

5. Respondent's other counsel, Stephen F. Hedinger, has likewise faced conflicts in his available time over the past couple of weeks, in particular with respect to cases that are scheduled for trial in mid-December, and with respect to cases that are approaching trial in the

next few months. In addition, the motion for partial summary judgment has necessitated a review of files and of numerous transcripts of depositions taken more than five years ago, all of which have been dormant for several years as a result of the prior stay in this case, for purposes of identifying information to support the motion for partial summary judgment. That process has taken far longer than was anticipated earlier. Moreover, many of the background documents and many of the personnel with knowledge of those documents have been relocated in the years of inactivity (which also was accompanied by a transfer of relevant assets from Peabody Coal Company, L.L.C. to Heritage Coal Company, L.L.C.), which has substantially complicated Respondent's efforts to marshal the evidence necessary to support the motion for partial summary judgment.

6. Counsel for Respondent are confident that, if the deadline for filing the motion is extended to December 20 as requested, they will be able to file the proposed motion by that date.

7. This motion is being made in good faith, and not for any improper or dilatory purpose. Allowance of the motion and of the extension requested herein will permit Respondent to provide this Board with all arguments and information necessary for serious consideration of the issues Respondent feels may be dispositive of some parts of this case. Denial of the motion would result in Respondent either being completely unable to file any motion, or being forced to file a motion that insufficiently addresses the issues raised. The purpose of the proposed motion for partial summary judgment is to potentially expedite the finalization of this case, and that purpose will remain fulfilled upon granting this motion for extension. However, denial of this motion would have the opposite effect, and would deprive the parties of the opportunity to present the issues to this Board for summary consideration.

8. Any prejudice to Complainant as a consequence of this request can be offset by allowance of corresponding extensions for Complainant's response to the motion. At present no date has been set for finalization of discovery or for trial, however, and so prejudice to Complainant would appear to be unlikely and unexpected.

9. Counsel for Respondent has contacted counsel for Complainant about this motion, and counsel for Complainant indicated that he would oppose the requested enlargement of time.

10. In accordance with the above, Respondent requests that this Board, through its hearing officer, grant an additional enlargement of the time within which to file the motion for partial summary judgment, to and until December 20, 2010, and extend the dates for the response and reply as set forth above.

WHEREFORE Respondent, HERITAGE COAL COMPANY, L.L.C., requests that this Board, through its hearing officer, grant an additional enlargement of the time within which to file the motion for partial summary judgment that has been anticipated by the parties, to and until December 20, 2010, and extend the date for Complainant's response to that motion to January 20, 2011, and extend the date for Respondent's reply to February 10, 2011. Respondent further requests that this Board, through its hearing officer, grant in favor of Respondent all such other and further relief as it deems mete and just.

Dated: November 18, 2010

Respectfully submitted,

HERITAGE COAL COMPANY, L.L.C.
(f/k/a PEABODY COAL COMPANY,
L.L.C.), Respondent

By: 

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I have served a copy of the foregoing document upon:

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Thomas Davis
Office of the Illinois Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

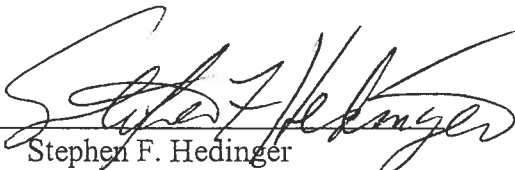
by depositing same in the U.S. Mail, first class, postage prepaid, on this 18th day of November, 2010.

Similarly, the original and three copies were mailed to:

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

by depositing same in the U.S. Mail, first class, postage prepaid, on this 18th day of November, 2010.

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