

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 22 2011

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)

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RESPONDENT'S MOTION FOR LEAVE TO FILE REPLY TO
COMPLAINANT'S RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES Respondent, HERITAGE COAL COMPANY, L.L.C., through its undersigned attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Stephen F. Hedinger of counsel, and pursuant to Section 101.500(e) of this Board's Procedural Rules, 35 Ill. Adm. Code Section 101.500(e), requests this Board, through its Hearing Officer, for leave to file its reply to the "Complainant's Response to Motion for Partial Summary Judgment." In support of this motion, Respondent states as follows:

1. By order entered by the Hearing Officer on February 8, 2011, Complainant was directed to file its response to Respondent's motion for partial summary judgment on or before April 11, 2011.

2. On April 11, 2011, Complainant submitted its proposed 52 page response to the motion for partial summary judgment, along with a motion to exceed page limitation, requesting leave to file the over-sized response.

3. Complainant's motion for leave to file the over-sized response has not yet been ruled upon. By this motion, Respondent hereby states that it has no objection to the filing of the document.

4. In the Hearing Officer's February 8, 2011 Hearing Officer Order, no deadline or other provision for the filing of a reply was stated. Further, this Board's Procedural Rule 101.500(e) provides that there is no right for a movant to file a reply, unless granted leave by the Hearing Officer or Board.

5. Respondent hereby moves the Hearing Officer for leave to file a reply to the "Complainant's Response to Motion for Partial Summary Judgment," and requests that the deadline for filing the reply be May 20, 2011, which is thirty (30) days from the date of filing of this motion.

6. The issues raised in the pending motion for summary judgment are complex, and the length of Complainant's response warrants lengthy and serious review, research and discussion. Accordingly, Respondent requests, in the interest of justice and for the assurance of complete consideration of the arguments and positions of the parties with respect to the issues raised by the pending motion, and to prevent material prejudice to Respondent, that Respondent be granted leave to file a reply, and that the due date of the reply be set, at this time, for May 20, 2011.

WHEREFORE Respondent, HERITAGE COAL COMPANY, L.L.C., requests that this Board, through its Hearing Officer, grant leave for Respondent to file a reply to the "Complainant's Response to Motion for Partial Summary Judgment" on or before May 20, 2011.

Dated: April 20, 2011

Respectfully submitted,

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

By:


Stephen F. Hedinger

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Pollution Control Board

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

W.C. Blanton
Husch Blackwell LLP
4801 Main Street
Suite 1000
Kansas City, MO 64112

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by depositing same in the U.S. Mail, first class, postage prepaid, on this 20th day of April, 2011.

Similarly, the original and nine 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 20th day of April, 2011.

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