

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

---

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No. 99-134</b>
	)	
<b>HERITAGE COAL COMPANY LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

---

**NOTICE OF ELECTRONIC FILING**

---

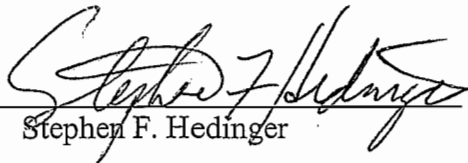
To: Bradley Halloran, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph St., Suite 11-500 Chicago, IL 60601	Thomas Davis Office of the Illinois Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62706
W.C. Blanton Husch Blackwell LLP 4801 Main Street, Suite 1000 Kansas City, MO 64112	

PLEASE NOTE NOTICE that on July 12, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 West Randolph St., Suite 11-500, Chicago, IL 60601, RESPONDENT HERITAGE COAL COMPANY LLC'S MOTION TO SHORTEN TIME FOR COMPLAINANT TO RESPOND TO REQUESTS FOR ADMISSION, a copy of which is attached hereto and herewith served upon you.

Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC  
Respondent

By:   
Stephen F. Hedinger

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Stephen F. Hedinger, of Counsel  
607 E. Adams St., Suite 800  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217.544.1144  
Fax: 217.522.3173  
E-mail: [sfhedinger@sorlinglaw.com](mailto:sfhedinger@sorlinglaw.com)

W.C. Blanton  
Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Telephone: (816) 983-8151  
Fax: (816) 983-8080  
E-mail: [wdblanton@huschblackwell.com](mailto:wdblanton@huschblackwell.com)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

---

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No. 99-134</b>
	)	
<b>HERITAGE COAL COMPANY LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

---

**RESPONDENT HERITAGE COAL COMPANY LLC'S MOTION TO SHORTEN TIME FOR COMPLAINANT TO RESPOND TO REQUESTS FOR ADMISSION**

Respondent, Heritage Coal Company LLC ("HCC"), hereby moves the Board for an order shortening to 12:00 noon on Monday, July 18, 2011, the time for Complainant, the People of the State of Illinois (the "State") to respond to Respondent Heritage Coal Company LLC's Second Set Of Requests For Admission To Complainant, a copy of which is attached hereto as Exhibit A. In support of this motion, HCC states:

1. On December 20, 2010, HCC filed in this action its motion for partial summary judgment ("HCC's Motion") and its opening brief in support thereof (the "Opening Brief").
2. By HCC's Motion, HCC requests the Board to enter summary judgment in favor of HCC and against the State with respect to all of the State's claims set forth in Count III of the State's Third Amended Complaint ("Complaint") based on alleged violations of the Illinois Environmental Protection Act based on alleged exceedances of certain groundwater quality standards allegedly resulting from disposal of coal mining refuse from the underground coal mine formerly operated by HCC in Gallatin County, Illinois, known as the Eagle #2 Mine (the "Mine").

3. The grounds for HCC's motion is that none of the groundwater quality standards ("GWQS") allegedly exceeded as a result of HCC's operation of various areas of the Mine used for the disposal of coal mining refuse actually applies to any of the groundwater at issue.

4. Specifically, HCC contends (among other things) that certain GWQS established by 35 Ill. Adm. Code 620.410(a) do not apply because reclamation at the Mine was not completed at the time of the alleged violations.

5. To support its contention that reclamation at the Mine was not completed at the time of the alleged violations, HCC submitted the Affidavit Of W.C. Blanton ("Blanton Affidavit"), to which a copy of a printout of a screen located on the website of the Illinois Department of Natural Resources ("IDNR") is attached as Exhibit 1 (the "OMM Exhibit"), to establish that the current status of the Mine under Surface Mining Permit 34 ("Permit 34") issued to HCC on August 1, 1985, by the Illinois Department of Mines and Minerals pursuant to the Surface Coal Mining Land Conservation and Reclamation Act (the "Mining Law"), 225 ILCS Part 720, and its implementing regulations, 62 Ill. Adm. Code 1700 through 1850 (the "Mining Regulations" and thereafter amended and revised), is: "In reclamation, has outstanding bond."

6. In Complainant's response to HCC's Motion (the "State Response"), the State objects to HCC's reliance on the OMM Exhibit on the stated grounds that the exhibit does not necessarily qualify as a business record and that the Blanton Affidavit provides no foundational showing.

7. The State Response does not include any evidence that contests the Blanton Affidavit's authentication of the OMM Exhibit or otherwise suggests that reclamation of the mine was complete at the time of the alleged violations.

8. On July 11, 2011, HCC via both email and U. S. mail served the State with

Respondent Heritage Coal Company LLC's Second Set Of Requests For Admission To Complainant (a copy of which is attached hereto as Exhibit A), by which it requests the State to admit: (1) that the Office of Mines and Minerals ("OMM") within IDNR maintains the ArcIMS Illinois Coal Mine Permit Viewer, the web-based mapping application from which the OMM Exhibit was printed; (2) that the ArcIMS Illinois Coal Mine Permit Viewer is the means by which OMM communicates to the public information regarding Illinois Coal mines subject to the Mining Law and the Mining Regulations; (3) that OMM intends that the public rely on information contained in the ArcIMS Illinois Coal Mine Permit Viewer; (4) that the information contained in the ArcIMS Illinois Coal Mine Permit Viewer for Permit 34 is based on OMM data reflecting the current status of the Mine; and (5) that the OMM Exhibit is a true and accurate printout of a screen from the ArcIMS Illinois Coal Mine Permit Viewer for Permit 34, as of December 17, 2010.

9. Ordinarily, a party has 28 days to respond to requests for admission. 35 Ill. Adm. Code 101.618. However, the requested deadline of 12:00 noon on Monday, July 18, 2011, for the State to respond to HCC's requests for admission is reasonable in this case so that the State's objection to the OMM Exhibit may be resolved promptly and the Board's consideration of HCC's Motion can proceed.

10. HCC's requests for admissions are sufficiently limited and specific in scope that the State will not be unduly burdened if required to respond to them within the shortened time sought by this motion.

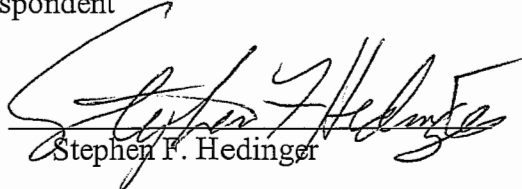
WHEREFORE, HCC requests the Board to enter an order shortening until 12:00 noon on July 18, 2011, the time for the State to respond to HCC's requests for admission.

Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC,  
Respondent

By:



Stephen F. Hedinger

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Stephen F. Hedinger, of Counsel  
607 E. Adams St., Suite 800  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217-544-1144  
Fax: 217-522-3173  
E-mail: sfhedinger@sorlinglaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

---

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 99-134
	)	
HERITAGE COAL COMPANY LLC,	)	
	)	
Respondent.	)	

---

RESPONDENT HERITAGE COAL COMPANY LLC'S SECOND SET OF REQUESTS FOR ADMISSION TO COMPLAINANT

Respondent, Heritage Coal Company LLC ("HCC"), pursuant to 35 Ill. Adm. Code 101.618, hereby requests Complainant, the People of the State of Illinois (the "State"), to admit or deny the truth of each of the statements in the Requests For Admission section of this document. Failure to respond to the following requests to admit within 28 days may have severe consequences.<sup>1</sup> Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney.

**DEFINITIONS**

To the extent that a term defined below is used in this document, it has the meaning ascribed to it in this Definitions section of this document.

1. "Board" means the Illinois Pollution Control Board.
2. "IDMM" means the former Illinois Department of Mines and Minerals.
3. "IDNR" means the Illinois Department of Natural Resources.

<sup>1</sup> HCC has moved the Board for an order shortening to 12:00 noon on Tuesday, July 19, 2011, the time for the State to respond to these requests.

4. "Mine" means the underground coal mine and associated surface operations and land owned and formerly operated by HCC in Gallatin County, Illinois, known as the Eagle #2 Mine.

5. "Mining Law" means the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS Part 720, which provides for the conservation and reclamation of lands affected by coal mining operations after February 1, 1983.

6. "Mining Regulations" means the regulations implementing the Mining Law, 62 Ill. Adm. Code 1700 through 1850.

7. "OMM" means the Office of Mines and Minerals within IDNR that regulates mining and oil and gas operations throughout the State of Illinois.

8. "Permit 34" means Surface Mining Permit 34, which was issued on August 1, 1985 by IDMM to HCC pursuant to the Mining Law and the Mining Regulations and thereafter amended or revised from time to time, thereby authorizing HCC's continued operation of the Mine under the provisions of the Mining Law.

#### **INSTRUCTIONS**

1. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.

2. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request for admission inclusive rather than exclusive.

#### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** OMM maintains the web-based mapping application at <http://dnrgis.state.il.us/website/Mpermit/viewer.htm> titled the ArcIMS Illinois Coal Mine Permit Viewer.



**REQUEST FOR ADMISSION NO. 2:** The ArcIMS Illinois Coal Mine Permit Viewer is a means by which OMM communicates to the public information regarding Illinois coal mines subject to the Mining Law.

**REQUEST FOR ADMISSION NO. 3:** OMM intends that the public rely on information contained in the ArcIMS Illinois Coal Mine Permit Viewer.

**REQUEST FOR ADMISSION NO. 4:** The information posted by OMM in the ArcIMS Illinois Coal Mine Permit Viewer for Permit 34 is based on OMM data reflecting the current status of the Mine.

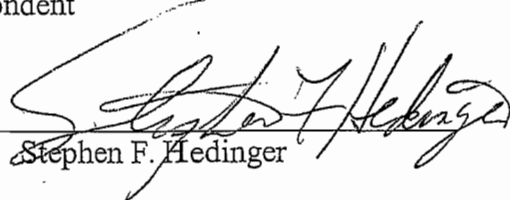
**REQUEST FOR ADMISSION NO. 5:** Exhibit 1 to the Affidavit Of W.C. Blanton filed with this Board on December 20, 2010, is a true and accurate printout of a screen from the ArcIMS Illinois Coal Mine Permit Viewer for Permit 34 as of December 17, 2010.

Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC,  
Respondent

By: \_\_\_\_\_

  
Stephen F. Hedinger

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Stephen F. Hedinger, of Counsel  
607 E. Adams St., Suite 800  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217-544-1144  
Fax: 217-522-3173  
E-mail: [sfhedinger@sorlinglaw.com](mailto:sfhedinger@sorlinglaw.com)

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  
halloranb@ipcb.state.il.us

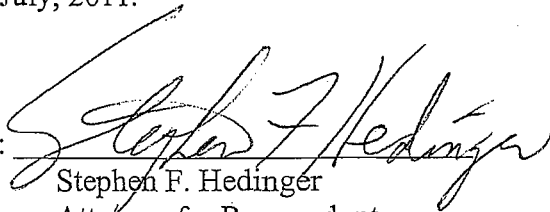
Thomas Davis  
Office of the Illinois Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706  
tdavis@atg.state.il.il.us

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

by depositing same in the U.S. Mail, first class, postage prepaid, and by electronic mail (email) to the email addresses noted, on this 12<sup>th</sup> day of July, 2011.

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Stephen F. Hedinger, of Counsel  
607 E. Adams St., Suite 800  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217.544.1144  
Fax: 217.522.3173  
sfhedinger@sorlinglaw.com

By:

  
Stephen F. Hedinger  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

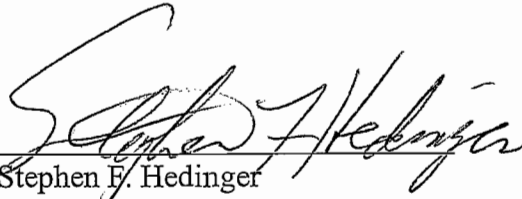
I hereby certify that I did on July 12, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, and by electronic mail (email) to the email addresses noted, a true and correct copy of the following instruments entitled RESPONDENT HERITAGE COAL COMPANY LLC'S MOTION TO SHORTEN TIME FOR COMPLAINANT TO RESPOND TO REQUESTS FOR ADMISSION, and the attached Notice of Electronic Filing, upon the following persons:

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

Thomas Davis  
Office of the Illinois Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706  
tdavis@atg.state.il.us

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

Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Stephen F. Hedinger, of Counsel  
607 E. Adams St., Suite 800  
P.O. Box 5131  
Springfield, IL 62705  
Telephone: 217.544.1144  
Fax: 217.522.3173  
sfhedinger@sorlinglaw.com

  
Stephen F. Hedinger  
Attorney for Respondent