

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	PCB 2010-061 and 2011-002
ENVIRONMENTAL LAW AND)	(Consolidated – Water –
POLICY CENTER, on behalf of PRAIRIE)	Enforcement)
RIVERS NETWORK and SIERRA CLUB,)	
ILLINOIS CHAPTER,)	
)	
Intervenor,)	
)	
v.)	
)	
FREEMAN UNITED COAL)	
MINING CO., L.L.C., and)	
SPRINGFIELD COAL COMPANY, L.L.C.,)	
)	
Respondents.)	

SPRINGFIELD COAL COMPANY, LLC’S MOTION FOR LEAVE TO REPLY TO PRAIRIE RIVERS NETWORK AND SIERRA CLUB’S REPLY TO SPRINGFIELD COAL’S RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT

Respondent Springfield Coal Company, LLC (“Springfield Coal”), pursuant to, and to the extent required by, 35 Ill. Admin. Code §§101.500 and 101.516, files its Motion for Leave to Reply to Prairie Rivers Network and Sierra Club’s (the “Intervenors”) Reply Regarding their Motion for Summary Judgment (the “Motion”). In support of this Motion, Springfield Coal states the following:

1. The Board has the authority to entertain any motion that the parties wish to file that is permissible by law. *See* 35 Ill. Admin. Code 101.500(a).
2. On June 22, 2012, the Intervenors filed the Motion for Leave for Reply to Freeman United’s and Springfield Coal’s Response to Motions for Summary Judgment (the

“Intervenors’ Motion for Leave”). The Intervenors also filed their single-spaced, twenty-three page “Prairie Rivers Network and Sierra Club’s Reply Regarding their Motion for Summary Judgment” (“Intervenors’ Reply”) concurrently with the Intervenors’ Motion for Leave.

3. Importantly, the Intervenors raise many new and incorrect statements of fact and law in the Intervenors’ Reply. The Intervenors also explicitly state that they are considering amending their complaint to add monitoring violations. *See* Intervenors’ Reply, p. 10. Moreover, the Intervenors hardly mention, much less discuss, compliance commitment agreements (“CCA”) in the Motion for Summary Judgment; however, in the Intervenors’ Reply, the Intervenors spend over four pages discussing the existence, role, and impact of CCAs in this matter. *See* Intervenors’ Reply, pp. 5 – 9. To the extent required by the Board’s regulations, Springfield Coal should be provided with the opportunity to reply to the Intervenors’ Reply, because Springfield Coal will be materially prejudiced if it is unable to respond to these new and incorrect statements of fact and law.

4. Furthermore, attached to the Intervenors’ Reply is a new affidavit by Jessica Dexter, counsel for Intervenors, submitted on June 22, 2012. Notably, the Intervenors did not submit an affidavit with the Motion for Summary Judgment dated April 27, 2012. Also attached to the Intervenors’ Reply are seven exhibits. Exhibit 3, entitled “Corrected Tables of Industry Mine NPDES Violations,” replaces Exhibit 3 to the Intervenors’ Motion for Summary Judgment dated April 27, 2012. Springfield Coal should be provided with the opportunity to reply to the Intervenors’ Reply because Springfield Coal will be materially prejudiced if it is unable to respond to the Intervenors’ new affidavit and new exhibits, especially an exhibit that purports to amend the exhibit presenting the alleged NPDES violations.

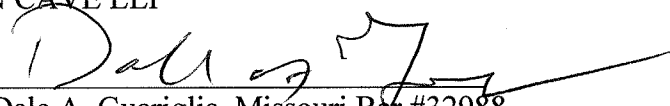
5. Springfield Coal is not prohibited from filing a reply to the Intervenors' Reply. *See* 35 Ill. Admin. Code 101.500; *see also* 35 Ill. Admin. Code 101.516. Accordingly, Springfield Coal may not need to file this motion in order to reply to the Intervenors' Reply. To the extent the Board believes that leave must be granted to allow Springfield Coal to file a reply to the Intervenors' Reply, Springfield Coal asks the Board to consider and grant this Motion. *See* 35 Ill. Admin. Code 101.500(a).

WHEREFORE, Respondent, Springfield Coal Company, LLC, respectfully requests that, to the extent required by the Illinois Pollution Control Board regulations, the Board grant this Motion for Leave to Reply and file the attached Reply to the Intervenors' Response to the Motion for Summary Judgment.

Dated: July 10, 2012

BRYAN CAVE LLP

By:


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NOTICE OF ELECTRONIC FILING

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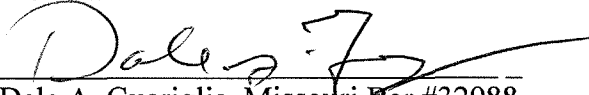
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PLEASE TAKE NOTICE that on July 10, 2012, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., LLC's Motion for Leave to Reply to Prairie Rivers Network and Sierra Club's Reply to Springfield Coal's Response to the Motion for Summary Judgment, copies of which are herewith served upon you.

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