

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.)	

SUPPLEMENT TO THE APPLICATION FOR CONFIDENTIAL AND NON-DISCLOSABLE INFORMATION DESIGNATION, SEAL, AND PROTECTIVE ORDER

COMES NOW Springfield Coal Company, L.L.C., (“Springfield Coal”), pursuant to 35 Ill. Adm. Code § 101.616, 35 Ill. Adm. Code § 400 *et seq.*, and 415 ILCS § 5/7(a), and for its Supplement to the Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order, states as follows:

1. On June 24, 2013, Springfield Coal electronically filed with the Illinois Pollution Control Board (the “Board”) its Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order (“June 24, 2013 Application”), requesting the Board enter a protective order for certain confidential business and financial records documents (the “Articles”). Springfield Coal concurrently filed with the Board via U.S. mail one set of the Articles. Springfield Coal seeks an order from the Board designating each of the Articles herein

referenced as Confidential Non-Disclosable Information, and that they be disclosed to the parties in this case subject to the condition that the parties may not use the Articles for any purpose other than this matter, and the parties may not disclose or transmit the Articles to third parties.

2. On July 1, 2013, Intervenors Prairie Rivers Network and Sierra Club, Illinois Chapter (“Intervenors”) filed their Opposition to Springfield Coal Co., LLC’s Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order (“Intervenors’ Opposition”).

3. On July 2, 2013, the People of the State of Illinois filed its People’s Response to Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order (“People’s Response”).

4. On July 9, 2013, Springfield Coal filed its Reply in Support of Its Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order (“July 9, 2013 Reply”).

5. On July 15, 2013, during a telephone hearing with all parties, Hearing Officer Carol Webb indicated that the Board had received Springfield Coal’s Application and provided Springfield Coal leave to supplement its Application until July 29, 2013.

6. Also on July 15, 2013, Mr. John Therriault, the Clerk for the Board, confirmed that, on June 26, 2013, the Board received the Articles.

7. To satisfy the requirements as set forth in 35 Ill. Adm. Code § 130.404(e), and in addition to the declarations Springfield Coal advanced in its Application and Reply, Springfield Coal states:

- a. The Articles consist of the following collections of documents:

- i. Springfield Coal's consolidated financial documents for fiscal years 2007 through 2012 (*see* Affidavit of Tom Austin, attached hereto as Exhibit A, ("Ex. A") at ¶ 2);
 - ii. Income statements of the Industry Mine for fiscal years 2007 through 2012 (*see* Ex. A at ¶ 2);
- b. The Articles constitute "confidential data submitted by any person" under 35 Ill. Adm. Code § 101.202, because they contain confidential proprietary information such as profits and losses, operating statements, and other highly sensitive business information of the Industry Mine and of Springfield Coal (*see* Ex. A at ¶ 3);
- c. Persons familiar with the Articles are limited to Springfield Coal's several officers, directors, and accounting personnel (Ex. A at ¶ 4);
- d. Springfield Coal has protected these Articles from disclosure since the date on which each was created, because Springfield Coal and its officers, directors, accounting personnel, representatives, and agents have regarded and continue to regard the Articles as confidential, proprietary information (Ex. A at ¶ 5); and
- e. Springfield Coal's business and proprietary interests will be damaged if the Articles are publicly disclosed. The Articles include financial statements and profit and loss statements. Public disclosure of these confidential records would unfairly benefit Springfield Coal's competitors and adversely affect Springfield Coal's relations with its suppliers, customers, and the public-at-large. The financial health of Springfield Coal, if known to its competitors, suppliers, and customers, would provide an unfair advantage as to pricing (Ex. A at ¶ 6);

f. Springfield Coal agrees to waive decision deadlines in accordance with 35 Ill. Adm. Code § 130.204.

8. The Board has entered protective orders under similar circumstances to protect a company's business and proprietary interests. *See, e.g., In re Petition of Horsehead Res. and Devel. Co., Inc.*, AS 00-2 (IPCB Sept. 9, 1999); *see also In re Proposed Site-Specific Rule Change for Reilly Tar and Chem. Corp., Granite City Facility*, R88-9 (IPCB Oct. 20, 1988).

9. Although Springfield Coal is willing to provide the Articles to the other parties in this matter, Springfield Coal's proprietary interests require protection against use of the articles for any other purpose than this litigation, including but not limited to disclosure to third parties.

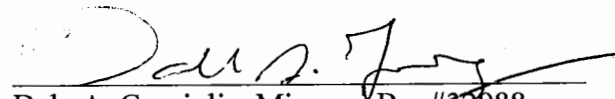
10. Springfield Coal respectfully incorporates its June 24, 2013 Application and July 9, 2013 Reply for the Board's consideration in entering its order.

WHEREFORE, Springfield Coal respectfully requests the Illinois Pollution Control Board grant Springfield Coal's Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order, and enter an order to designate that each of the Articles herein referenced are Confidential Non-Disclosable Information, and that they be disclosed to the parties in this case subject to the condition that the parties may not use the Articles for any purpose other than this matter, and the parties may not disclose or transmit the Articles to third parties, and to enter any other orders as appropriate or necessary to achieve the objectives articulated herein.

Dated: July 29, 2013

Respectfully submitted,

BRYAN CAVE LLP



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John R. Kindschuh, Illinois Bar #6284933
One Metropolitan Square
211 North Broadway Suite 3600
St. Louis, MO 63102
Telephone: (314) 259-2000

*Attorneys for Respondent,
Springfield Coal Company, LLC*

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PCB 2010-061 and 2011-002
Consolidated – Water – Enforcement

NOTICE OF ELECTRONIC FILING

TO:

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
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35 E. Wacker Dr., Ste. 1300
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Steven M. Siros
E. Lynn Grayson
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Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456

PLEASE TAKE NOTICE that on June 29, 2013, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., LLC's Supplement to the Application for Non-Disclosable Designation, copies of which are herewith served upon you.

BRYAN CAVE LLP



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211 North Broadway Suite 3600
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*Attorneys for Respondent,
Springfield Coal Company, LLC*

Exhibit A

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AFFIDAVIT OF THOMAS J. AUSTIN

Thomas J. Austin, being first duly sworn upon oath, deposes and states as follows:

1. My name is Thomas J. Austin. I am currently the Vice President of Human Resources and Government Relations for Springfield Coal Company, LLC (“Springfield Coal”). I have held this position since Springfield Coal acquired the Industry Mine from Freeman United Coal Mining Company, LLC (“Freeman United”) on August 31, 2007.
2. Springfield Coal seeks to disclose its consolidated financial documents for fiscal years 2007 through 2012 and the income statements of the Industry Mine for fiscal years 2007 through 2012 (the “Articles”).
3. These Articles are Springfield’s Coal confidential business records, because they contain confidential proprietary information such as profits and losses, operating statements, and other highly sensitive business information of the Industry Mine and of Springfield Coal.
4. Persons familiar with the Articles are limited to Springfield Coal’s several officers, directors, and accounting personnel.

5. Springfield Coal has protected the Articles from disclosure since the date on which each was created, because Springfield Coal and its officers, directors, accounting personnel, representatives, and agents have regarded and continue to regard the Articles as confidential, proprietary information.
6. Springfield Coal's business and proprietary interests will be damaged if the Articles are publicly disclosed. Public disclosure of these confidential records would unfairly benefit Springfield Coal's competitors and adversely affect Springfield Coal's relations with its suppliers, customers, and the public-at-large. The financial health of Springfield Coal, if known to its competitors, supplies, and customers, would provide an unfair advantage as to pricing.

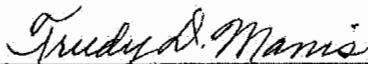
This concludes my affidavit.

Affiant:



Thomas J. Austin

Subscribed and sworn to before me this 29th day of July, 2013.



Notary Public

