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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 9, 2013

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
ENVIRONMENTAL LAW AND)
POLICY CENTER, on behalf of PRAIRIE)
RIVERS NETWORK and SIERRA CLUB,)
ILLINOIS CHAPTER,)
)
Intervenor,)
)
v.)
FREEMAN UNITED COAL MINING)
CO., LLC, and SPRINGFIELD)
COAL CO., LLC,)
)
Respondents.)

 ORIGINAL

PCB 2010-061
(Enforcement – Water)

ENVIRONMENTAL LAW AND)
POLICY CENTER, on behalf of PRAIRIE)
RIVERS NETWORK and SIERRA CLUB,)
ILLINOIS CHAPTER,)
)
Complainant,)
)
v.)
FREEMAN UNITED COAL MINING)
CO., LLC, and SPRINGFIELD)
COAL CO., LLC,)
)
Respondents.)

PCB 2011-002
(Enforcement – Water)
(Consolidated)

HEARING OFFICER ORDER

On November 15, 2012, the Board granted summary judgment to the Environmental Law and Policy Center (ELPC) on the issue of liability, but directed the parties to proceed to hearing on the issue of penalty, along with the issue of entry of a cease and desist order.

On August 19, ELPC filed a motion to compel discovery from respondent Springfield Coal Co., LLC (Springfield Coal). Springfield Coal filed a response in opposition to the motion to compel on September 3, 2013.

In response to ELPC's request for Springfield Coal's tax returns, Springfield Coal agreed to provide the documents if the Board granted its application for confidential and non-disclosable information. On September 5, 2013, the Board order granted the application, so presumably the documents will be produced, and the motion to compel this discovery is moot.

ELPC seeks to compel Springfield Coal to provide discovery related to other mines that may be under the same ownership and control as the Industry Mine, including previously adjudicated cases, pending cases, or violation notices pertaining to environmental issues. ELPC argues that the information is relevant to the amount of penalty that will deter future violations, as well as the economic benefit gained as a result of non-compliance.

Springfield Coal argues that only information relating to the Industry Mine is relevant. Discovery pertaining to Springfield Coal's principals, as well as other companies owned by those individuals is not relevant, and is designed to harass and cause undue expense. Springfield Coal further cites People v. Packaging Personified, Inc., PCB 04-16 (October 5, 2006), *see also* Hearing Officer order (June 28, 2006) as precedent that documents available to the public need not be produced as discovery.

ELPC's motion to compel is granted. Section 101.616 of the Board's procedural rules states that all relevant information and information calculated to lead to relevant information is discoverable. In this case, information relating to other companies owned by the same principals may lead to relevant information in the determination of a penalty amount. As to information concerning past and pending enforcement cases, such information may be relevant or lead to relevant information, although the admissibility of this evidence is not decided in this order.

With respect to information available to the public, this case is distinguishable from Packaging Personified where the information sought was available to the public because it could be found in the Board's files. In the present case, ELPC cannot be expected to locate a public document if it does not know that the document exists, or where it is available to the public. It is less burdensome for Springfield Coal to provide this information to ELPC.

Springfield Coal's deadline for producing this information is September 24, 2013. At the status conference an additional 7 days may be requested if necessary.

The parties are reminded to participate in a telephone status conference with the hearing officer at 10:00 a.m. on September 24, 2013. The People will send an email with a conference call-in number.

IT IS SO ORDERED.

Carol Webb

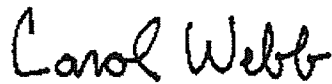
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on September 9, 2013, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on September 9, 2013:

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