

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 99-134
)
HERITAGE COAL COMPANY LLC,)
)
Respondent.)

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DEC 27 2010
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

To: Pollution Control Board
Attention: Clerk
(Via U.S. Mail)
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, Illinois 60601-3218

Thomas Davis
(Via U.S. Mail)
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Attorney General's Office
500 South 2nd Street
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Bradley Halloran, Hearing Officer
(Via U.S. Mail)
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 20th day of December, 2010, I sent to the Clerk of the Pollution Control Board the original and nine copies each of the following documents for filing in the above-entitled matter:

- Respondent Heritage Coal Company LLC's Motion For Partial Summary Judgment;
- Respondent Heritage Coal Company LLC's Opening Brief In Support Of Motion For Partial Summary Judgment;
- Respondent Heritage Coal Company LLC's Notice Of Filing Affidavits In Support Of Motion For Partial Summary Judgment; and

- Respondent Heritage Coal Company LLC's Request For Oral Argument; and
- Respondent Heritage Coal Company LLC's Notice Of Misnomer.

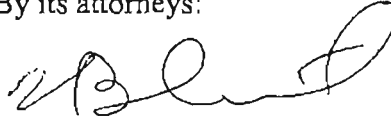
The undersigned certifies that true and correct copies of each of the above-described documents were served as stated above upon the above-identified individuals via U.S. mail by enclosing the same in envelopes properly addressed, with postage full prepaid, and by depositing said envelopes in a U.S. Post Office mail box, on the 20th day of December, 2010.

Date: December 20, 2010

Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY LLC**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 27 2010

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 HERITAGE COAL COMPANY LLC,)
)
 Respondent.)

PCB 99-134

RESPONDENT HERITAGE COAL COMPANY LLC'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

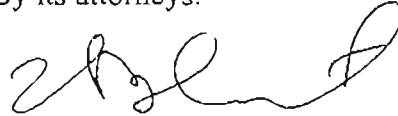
Respondent, Heritage Coal Company LLC (“HCC”), pursuant to 35 Ill. Adm. Code 101.516, hereby moves the Board for summary judgment in its favor and against Complainant, the People of the State of Illinois (the “State”), with respect to all of the State’s assertions of violations of the Illinois Environmental Protection Act based on alleged exceedances of certain groundwater quality standards as set forth in Count III of the State’s Third Amended Complaint. The grounds for this motion are that none of the groundwater quality standards alleged by the State to have been exceeded by HCC operations at its Eagle #2 Mine applied to those operations, as more fully discussed in Respondent Heritage Coal Company LLC’s Brief In Support Of Motion For Partial Summary Judgment, filed herewith.

Date: December 20, 2010

Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY LLC**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
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 v.)
)
 HERITAGE COAL COMPANY LLC,)
)
 Respondent.)

RECEIVED
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STATE OF ILLINOIS
Pollution Control Board
PCB 99-13

RESPONDENT HERITAGE COAL COMPANY LLC'S
OPENING BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT

Respondent, Heritage Coal Company LLC (“HCC”),¹ hereby submits its opening brief in support of Respondent Heritage Coal Company LLC’s Motion For Partial Summary Judgment (“HCC’s Motion”). For the reasons discussed below, this Board should enter summary judgment in favor of HCC and against Complainant, the People of the State of Illinois (the “State”), with respect to all of the State’s assertions of violations of the Illinois Environmental Protection Act (the “State Act”) based on alleged exceedances of certain groundwater quality standards as set forth in Count III of the State’s Third Amended Complaint (“Complaint”). In short, none of the groundwater quality standards alleged by the State to have been exceeded by HCC operations at its Eagle #2 Mine apply to those operations.

¹ HCC was formerly named Peabody Coal Company, Inc. and later named Peabody Coal Company, LLC. Consequently, certain of the affidavits filed by HCC in support of HCC’s Motion reference Peabody Coal Company, Respondent’s name at the time of the events addressed by the affiant.

I. INTRODUCTION

This matter involves an underground coal mine formerly operated by HCC in Gallatin County, Illinois, known as the Eagle #2 Mine (the “Mine”). The State alleges in its Complaint that HCC has unlawfully contaminated groundwater at and in the vicinity of the Mine. More specifically, the State alleges that the disposal of coal mining refuse, primarily in the nature of gob and slurry, at various areas of the Mine (the “Disposal Areas”) has resulted in increased concentrations of sulfates, chlorides, total dissolved solids (“TDS”), manganese, and iron as compared to “background” concentrations of those substances in the groundwater at issue.

In Counts I and II of its Complaint, the State alleges that HCC’s operation of the Disposal Areas created a “water pollution hazard” in violation of Section 12(d) of the State Act, 415 ILCS 5/12(d). In Counts I and II of its Complaint, the State also alleges that HCC’s operation of the Disposal Areas caused exceedances of allegedly applicable groundwater quality standards (“GWQS”) at and in the vicinity of the Mine so as to constitute “water pollution” in violation of Section 12(a) of the State Act, 415 ILCS 5/12(a). In Count III of its Complaint, the State asserts that the alleged exceedances of allegedly applicable GWQS resulting from HCC’s operation of the Disposal Areas violate certain provisions of 35 Ill. Adm. Code 620.450(b)² and other provisions of 35 Ill. Adm. Code Part 620 (“Part 620”), the regulations that implement the Illinois Groundwater Protection Act (the “GPA”), and also constitute violations of Section 12(a) of the State Act.

By HCC’s Motion, HCC seeks summary judgment only with respect to the State’s assertions of violations of the State Act as set forth in Count III of its Complaint, on the grounds

² For ease of reference, all references herein to “Section ____” means “35 Ill. Adm. Code ____” unless expressly specified otherwise.

that none of the GWQS allegedly exceeded as a result of HCC's operation of the Disposal Areas actually apply to any of the groundwater at issue.³ In short,

- The GWQS established by Section 620.410(a) do not apply because reclamation at the Mine was not completed at the time of the alleged violations.
- The GWQS established by Section 620.301 do not apply because the Disposal Areas do not discharge to "resource groundwater."
- The GWQS established by Sections 302.208 and 302.304 do not apply because the Disposal Areas are not "not contained within an area from which overburden has been removed."
- At all times after December 5, 2006, the alternative GWQS under Section 620.450(a)(3) apply because a groundwater management zone ("GMZ") was established at the Mine in December 6, 2006, pursuant to Section 620.250(a).

II. FACTS

The undisputed facts material to the issues raised by HCC's Motion are as follows:⁴

1. From 1968 until 1993, HCC constructed and operated the Mine as an underground coal mine and associated auxiliary surface areas. Brown at ¶ 8.

³ HCC denies that its operation of the Disposal Areas created a "water pollution hazard" or resulted in "water pollution" as alleged by the State in Counts I and II of its Complaint and further denies that the State can prove that HCC's operation of the Disposal Areas resulted in any exceedance of any GWQS that the State contends is applicable here. However, those issues are not presented for resolution by the Board at this time by HCC's Motion.

⁴ As used herein, citations to the affidavits filed by HCC in support of HCC's Motion are as follows:

"Blanton" means the Affidavit Of W.C. Blanton, dated December 20, 2010.

"Brown" means the Affidavit Of Keith Brown, dated December 20, 2010.

"Fry" means the Affidavit Of Eric Fry, dated December 16, 2010.

"McGarvie" means the Affidavit Of Scott McGarvie, dated December 20, 2010.

"Munday" means Affidavit Of Michael L. Munday, dated December 16, 2010.

2. As part of its operations at the Mine, HCC constructed the Disposal Areas at the surface portion of the Mine, including excavating trenches at some locations. These Disposal Areas are identified as Slurry No. 1/Slurry No. 1A; Slurry No. 2; Slurry No. 3; West Refuse Area/Slurry No. 5; South 40 Refuse Area; the New South 40 Refuse Area; and the Emergency Slurry Area.⁵ Brown Affidavit at ¶ 8, Ex. 1.

3. Disposal Area Slurry No. 1 was active by January 1971. Id.

4. Construction of Disposal Area Slurry No. 2 was completed by December 1978, and that area was active by January 1979. Id.

5. Construction of Disposal Area No. 3 was completed by November 1984, and that area was active by July 1985. Id.

6. The Disposal Area originally identified as the West Refuse Area and later as Slurry No. 5 was active by January 1971. Id.

7. The Disposal Area identified as the South Forty Refuse Area was active by April 1978. Id.

8. The New South Refuse Area was constructed south of Slurry No. 1 and Slurry No. 5. Id.

9. The Mine was first permitted in 1968. Complaint ¶ 5.

10. On August 1, 1985, the Illinois Department of Mines and Minerals (“IDMM”) issued Surface Mining Permit 34 (“Permit 34”) to HCC pursuant to the Surface Coal Mining Land Conservation and Reclamation Act (the “Mining Law”), 225 ILCS Part 720,⁶ and its

⁵ The Emergency Slurry Area was constructed just West of Slurry No. 1 by April 1978. Brown at ¶ 8, Ex.1. The State has not identified the operation of the Emergency Slurry Area as an alleged source of any alleged violations at issue in this matter, so this Disposal Area is not further discussed herein.

⁶ The Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720) provides for the conservation and reclamation of lands affected by coal mining operations after February 1, 1983. The Surface Mined-Land

implementing regulations, 62 Ill. Adm. Code 1700 through 1850 (the “Mining Regulations”), thereby authorizing HCC’s continued operation of the Mine under the provisions of the Mining Law.⁷ Blanton at ¶ 3, Ex.1.

11. Operations at the Mine were carried out pursuant to Permit 34, as amended from time to time. In particular, the coal mining refuse disposal and other activities carried out at the Disposal Areas were specifically addressed and authorized by the provisions of Permit 34, as amended from time to time, through the cessation of active mining operations and related coal mining refuse disposal operations at the Mine in 1993. Brown at ¶ 5.

12. All activities carried out in the Disposal Areas pursuant to the relevant provisions of Permit 34 were subject to bonding requirements to ensure reclamation of those areas. Those bonding requirements remained in full force and effect through the cessation of coal mining refuse disposal activities at the Mine. Brown at ¶ 6.

13. Throughout the period of active mining operations at the Mine and the associated generation of coal mining refuse, at least as early as the beginning of 1984, Disposal Areas were used for refuse placement, followed by carbon recovery activities, followed by further refuse placement on an ongoing and repetitive basis in a continuing cycle of refuse disposal and carbon recovery. Brown at ¶ 11.

14. The development of Disposal Area Slurry 1A involved increasing the height of the existing levees around the perimeter of then-existing and active Disposal Area Slurry 1 with coal mining refuse, primarily gob, placed inside the interior walls of existing levees to a height

Conservation and Reclamation Act (225 ILCS 715) established control of environmental impacts for coal mining activities for operations prior to February 1, 1983.

⁷ The Illinois Department of Natural Resources (“IDNR”) was created by the consolidation of five separate State agencies, including IDMM, effective July 1, 1999. Within IDNR, the Office of Mines and Minerals (“OMM”) regulates mining and oil and gas operations throughout the State of Illinois.

approximately 20 feet higher than that of those existing levees so as to serve as containment for additional placement of slurry and other coal mining refuse. The construction and use of Disposal Area Slurry 1A did not involve any lateral extension in any direction of the existing and active Disposal Area Slurry 1, only a modification of that Disposal Area by the additional placement of additional slurry and other coal mining refuse onto the existing area to a height not previously approved under Surface Mining Permit 34. Thus, the development and operation of Disposal Area Slurry 1A did not increase the footprint, *i.e.*, the surface area, of that Disposal Area. During the construction of the new levees for this Disposal Area, the disposal of slurry in that Disposal Area continued. Brown at ¶ 12.

15. As of early 1993, land reclamation so as to establish the approved post-mining land uses for most of the Disposal Areas had not yet begun. Land reclamation of the Disposal Areas in this regard was not completed until a number of years later. McGarvie at ¶¶ 4 and 5.

16. On May 6, 2005, HCC submitted to IEPA HCC's original proposal (the "GMZ Proposal") for the establishment of a GMZ at the Mine to address certain groundwater quality issues at and in the vicinity of the Mine that are at issue in this matter. For several months thereafter, HCC worked with IEPA staff in modifying the GMZ Proposal to the extent necessary to provide for terms and conditions of a GMZ mutually acceptable to IEPA and HCC. Fry at ¶ 5.

17. On December 6, 2006, IEPA approved HCC's GMZ Proposal, as modified as of November 17, 2006, thereby establishing a GMZ at and in the vicinity of the Mine in accordance with the provisions of the PCC GMZ Proposal, as modified. Fry at ¶ 6, Ex. 1.

18. Since November 2007, ongoing activities at the Mine have been undertaken pursuant to Permit 34. This permit presently addresses and establishes the terms and conditions of, among other things, HCC's maintenance of the Disposal Areas at the Mine, including the

bonding requirements relating to reclamation following the cessation of active operations at that facility. Munday at ¶ 5.

19. HCC has not sought to be released from the reclamation bonding obligations under Permit 34. Munday at ¶ 6.

20. The IDNR website material that provides information regarding the status of active permits issued pursuant to the Mining Law describes the current status of the Mine under Permit 34 to be: "In reclamation, has outstanding bond." Blanton at ¶ 3, Ex. 1.

III. APPLICABLE REGULATION

The key regulation at issue in this matter, Section 620.450, provides, in pertinent part:

- b) Coal Reclamation Groundwater Quality Standards
 - 1) Any inorganic chemical constituent or pH in groundwater, within an underground coal mine, or within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area pursuant to the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] and 62 Ill. Adm. Code 1700 through 1850, is subject to this Section.
 - 2) Prior to completion of reclamation at a coal mine, the standards as specified in Sections 620.410(a) and (d), 620.420(a) and (d), 620.430 and 620.440 are not applicable to inorganic constituents and pH.
 - 3) After completion of reclamation at a coal mine, the standards as specified in Sections 620.410(a) and (d), 620.420(a), 620.430, and 620.440 are applicable to inorganic constituents and pH, except:
 - A) The concentration of total dissolved solids (TDS) must not exceed:
 - i) The post-reclamation concentration or 3000 mg/L, whichever is less, for groundwater within the permitted area; or
 - ii) The post-reclamation concentration of TDS must not exceed the post-reclamation concentration or 5000 mg/L, whichever is less, for groundwater in

underground coal mines and in permitted areas reclaimed after surface coal mining if the Illinois Department of Mines and Minerals and the Agency have determined that no significant resource groundwater existed prior to mining (62 Ill. Adm. Code 1780.21(f) and (g)); and

- B) For chloride, iron, manganese and sulfate, the post-reclamation concentration within the permitted area must not be exceeded.
 - C) For pH, the post-reclamation concentration within the permitted area must not be exceeded within Class I: Potable Resource Groundwater as specified in Section 620.210(a)(4).
- 4) A refuse disposal area (not contained within the area from which overburden has been removed) is subject to the inorganic chemical constituent and pH requirements of:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing;
 - B) Section 620.440(c) for such area that was placed into operation prior to February 1, 1983, and has remained in continuous operation since that date; or
 - C) Subpart D of this Part for such area that is placed into operation on or after the effective date of this Part.
- 5) For a refuse disposal area (not contained within the area from which overburden has been removed) that was placed into operation prior to February 1, 1983, and is modified after that date to include additional area, this Section applies to the area that meets the requirements of subsection (b)(4)(C) and the following applies to the additional area:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such additional refuse disposal area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing; and

- B) Subpart D for such additional area that was placed into operation on or after the effective date of this Part.
- 6) A coal preparation plant (not located in an area from which overburden has been removed) which contains slurry material, sludge or other precipitated process material, is subject to the inorganic chemical constituent and pH requirements of:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such plant that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing;
 - B) Section 620.440(c) for such plant that was placed into operation prior to February 1, 1983, and has remained in continuous operation since that date; or
 - C) Subpart D for such plant that is placed into operation on or after the effective date of this Part.
- 7) For a coal preparation plant (not located in an area from which overburden has been removed) which contains slurry material, sludge or other precipitated process material, that was placed into operation prior to February 1, 1983, and is modified after that date to include additional area, this Section applies to the area that meets the requirements of subsection (b)(6)(C) and the following applies to the additional area:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such additional area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing; and
 - B) Subpart D for such additional area that was placed into operation on or after the effective date of this Part.

The applicability of Section 620.450(b) is stated in Section 620.450(b)(1), and includes both the groundwater within a permitted coal mine area and any groundwater within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed

from a permitted coal mine area. Sections 620.450(b)(2) and (b)(3) establish GWQS for all groundwater within a permitted coal mine area, while Sections 620.450(b)(4) and (b)(5) establish GWQS for all groundwater at the location of a coal preparation plant and associated coal mining refuse disposal areas not within a permitted coal mine area, but still within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed.

IV. ISSUES

The issues presented by HCC's Motion to be resolved by the Board are as follows:

- Whether the GWQS established by Section 620.410(a) apply to any groundwater as to which the hydrologic balance has been disturbed as a result of HCC's operations at the Mine; and
- Whether the GWQS established by Section 620.301 apply to any groundwater as to which the hydrologic balance has been disturbed as a result of HCC's operations at the Mine;
- Whether the GWQS established by Section 302.208 and Section 302.304 apply to any groundwater as to which the hydrologic balance has been disturbed as a result of HCC's operations at the Mine; and
- Whether the alternative GWQS at Section 620.450(a)(3) apply to all groundwater as to which the hydrologic balance was disturbed as a result of HCC's operations at the Mine at all times beginning December 6, 2006, when a GMZ applicable to all such groundwater was established.

V. SUMMARY JUDGMENT STANDARD

Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides:

If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving parties entitled to judgment as a matter of law, the Board will enter summary judgment.

The purpose of the summary judgment procedure is to aid in the expeditious resolution of a lawsuit. See Atwood v. St. Paul Fire & Marine Ins. Co., 845 N.E.2d 68, 70 (Ill. App. 2d Dist. 2006). The purpose of a summary judgment proceeding is not to try an issue of fact, but “to determine whether any genuine issue of material fact exists.” See Happel v. Wal-Mart Stores, Inc., 199 Ill. 2d 179, 186, 766 N.E.2d 1118, 1123 (2002).

VI. ARGUMENT

The State alleges that HCC’s operation of the Disposal Areas at the Mine has resulted in violations of various allegedly applicable GWQS. Complaint, Count III. For the following reasons, though, those standards do not apply to HCC’s operations; and, therefore, no violations occurred as alleged.

A. The GWQS Established By Section 620.410(a) Do Not Apply Because Reclamation At The Mine Was Not Completed At The Time Of The Alleged Violations.

The State alleges that HCC’s operation of the Disposal Areas resulted in exceedances of GWQS at Section 620.410(a). Complaint at Count III. However, HCC’s operation of the Disposal Areas is not subject to Section 620.410(a), because its operations are instead subject to the alternative GWQS at Section 620.450(b), which provides an exemption to Section 620.410(a) “[p]rior to completion of reclamation at a coal mine,” per Section 620.450(b)(2).

Subpart D of 35 Ill. Adm. Code Part 620 (“Part 620”) contains the general prohibition that “[n]o person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this [Subpart D] to be exceeded,” see Section 620.405, and establishes specific GWQS applicable to certain classes of groundwaters.

See, e.g., Section 620.410(a) (establishing standards for inorganic chemical constituents such as chloride, iron, manganese, and TDS in Class I potable resource groundwaters) and Section 620.410(d) (establishing standards for pH in Class I groundwaters).⁸

However, Section 620.450 establishes alternative standards for specific groundwaters. Pursuant to Section 620.450(b)(1), the alternate GWQS at Section 620.450(b) apply to “[a]ny inorganic chemical constituent or pH in groundwater, within an underground coal mine, or within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area pursuant to the Surface Coal Mining Land Conservation and Reclamation Act [225 ICLS 720] and 62 Ill. Adm. Code 1700 through 1850.” See Section 620.450(b)(1).

1. **The Disposal Areas Are Located “Within An Underground Coal Mine” And “Within The Cumulative Impact Area Of Groundwater For Which The Hydrologic Balance Has Been Disturbed From A “Permitted Coal Mine Area” For Purposes Of Section 620.450(b)(1).**

The Disposal Areas are located “within an underground coal mine” for purposes of Section 620.450(b)(1). The term “coal mine” is not defined in either the GPA or its implementing regulations. However, similar terms are used in the Mining Law, which establishes the primary set of rules governing coal mine areas and the impact of such areas on groundwater and which subjects all coal mining activities in Illinois to stringent permitting requirements. Thus, there was no need for these terms to be redefined for purposes of Part 620.

⁸ Under Section 620.201(a), all groundwaters of the State are generally designated as one of the following four classes of groundwater: Class I, potable resource groundwater; Class II, general resource groundwater; Class III, special resource groundwater; or Class IV, other groundwater. Groundwater may also be designated as “[a] groundwater management zone in accordance with Section 620.250,” or “[a] groundwater management zone as defined in 35 Ill. Adm. Code 740.120 and established under 35 Ill. Adm. Code 740.530.” See Section 620.201(b) and (c). GWQS for other classes of groundwater are set forth in other provisions of Part 620. See Section 620.420(a) (establishing standards for inorganic chemical constituents in Class II general resource groundwaters); Section 620.420(d) (establishing standards for pH in Class II groundwaters); Section 620.430 (establishing standards for Class III special resource groundwaters); Section 620.440 (establishing standards for Class IV other groundwaters).

Also, nothing in the Part 620 regulations suggests that they were intended to regulate only a subset of the mining activity subject to the Mining Law.

It is unlawful for any person to engage in “mining operations” subject to the provisions of the Mining Law without first obtaining a permit from OMM. See 225 ILCS 720/2.01. The term “mining operations” is defined to include “both surface mining operations and underground mining operations.” See 225 ILCS 720/1.03(a)(10). The term “underground mining operations” is broadly defined to include the underground excavation of coal as well as “surface operations incident to the underground extraction of coal, such as ... areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed.” Thus, the definition encompasses all activities that might possibly meet the definition of “coal mine” as that term is used in the groundwater quality regulations. See 225 ILCS 720/1.03(a)(26). More specifically, the Disposal Areas are “areas used for the storage and disposal of waste” that are “incident to the underground extraction of coal” and are thus a part of the “mining operations” covered by Permit 34 issued under the Mining Law. Accordingly, they are part of the “coal mine area permitted under” the Mining Law for the purposes of the Part 620 regulations.

Application of terms from the Mining Law to interpretation of the Part 620 regulations is supported by Illinois case law discussing general principles of statutory construction. For instance, Illinois courts have held that where the same word is used in different sections of the same legislative act, the presumption is that the word is employed with the same definite meaning unless there is something in the act to clearly show that a different meaning was intended. See People ex rel. Lipsky v. City of Chicago, 85 N.E.2d 667 (Ill. 1949); United

Consumers Club, Inc. v. Attorney General, 456 N.E.2d 856 (Ill. App. 1983); People v. Talbot, 153 N.E. 693 (Ill. 1926).

Although the same presumption does not apply where the same word is used in different statutes, courts have also consistently recognized that “[t]he meaning of words used in a given statute may be ascertained from the consideration of other acts in paria materia where the words are used.” See Lake County v. Gateway Houses Foundation, Inc., 311 N.E.2d 371, 377 (Ill. App. 1974) (citations omitted); Christ Hosp. & Medical Ctr. v. Illinois Comprehensive Health Ins. Plan, 693 N.E.2d 1237 (Ill. App. 1998); Miller v. Illinois Pollution Control Board, 642 N.E.2d 475 (Ill. App. 4th Dist. 1994) (holding that “[t]he examples of litter set forth in the Litter Control Act (Ill. Rev. Stat. 1991, ch. 38, par. 86-1 et seq.) provide additional guidance” regarding the interpretation of the term “litter” in an action alleging violation of the Illinois Environmental Protection Act’s prohibition against open dumping resulting in the occurrence of litter). Here, several factors weigh in favor of applying the definition of “underground mining operations” from the Mining Law to define the term “coal mine” for purposes of Illinois’s groundwater quality standards.

First, the purposes of the Mining Law and of Part 620 are the same. See, e.g., Chicago Tribune Co. v. Johnson, 456 N.E.2d 356 (Ill. App. 1983) (applying a definition from the Retailer’s Occupation Tax Act to define the same term in the Use Tax Act, because both statutes were intended to implement the legislature’s plan for the taxation of transfers of tangible personal property). The stated purpose of Part 620 is to “prescribe[] various aspects of groundwater quality, including method of classification of groundwaters, nondegradation provisions, standards for quality of groundwaters, and various procedures and protocols for the management and protection of groundwaters.” See Section 620.105. Similarly, the purposes of

the Mining Law include “protecting the health, safety and general welfare of the people, the natural beauty and aesthetic values, and enhancement of the environment in the affected areas of the State” and “prevent[ing] erosion, stream pollution, water, air and land pollution and other injurious effects to persons, property, wildlife and natural resources.” See 225 ILCS 720/1.02. The Mining Law and the Part 620 regulations are therefore “in para materia,” because the purpose of both statutes is to protect water quality.

Also, Illinois courts have held that they may presume that in drafting the language of one statute, the Legislature was aware of the construction and use of a term in another statute and intended that language to have the same meaning. See Christ Hosp. & Medical Ctr., 693 N.E.2d at 1241. Here, both IEPA and the Board clearly were aware of the Mining Law at the time the GWQS were adopted, as those standards expressly state that “[a]ny inorganic chemical constituent or pH in groundwater, within an underground coal mine, or within the cumulative impact area for which the hydrologic balance has been disturbed from a permitted coal mine area pursuant to the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] and 62 Ill. Adm. Code 1700 through 1850” are subject to regulation under Section 620.450(b). See Section 620.450(b)(1) (emphasis added). Also, the term “cumulative impact area” means “the area, including the coal mine area permitted under the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] and 62 Ill. Adm. Code 1700 through 1850, within which impacts resulting from the proposed mining operation may interact with the impacts of all anticipated mining on surface water and groundwater systems.” See Section 620.110 (emphasis added). This clearly indicates that the Mining Law and its implementing regulations are relevant to application of the Part 620 regulations.

The Disposal Areas are also located “within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area” for purposes of Section 620.450(b)(1). Under Section 620.110, the “cumulative impact area” of a permitted coal mine area is “the area, including the coal mine permitted under the Surface Coal Mining Land Conservation Act [225 ILCS 720] and 62 Ill. Adm. Code 1700 through 1850, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface water and groundwater systems.” See 35 Ill. Adm. Code 620.110 (emphasis added). The cumulative impact area is therefore an area in which impacts on groundwater are anticipated. It would make no sense, then, for the alternative GWQS not to encompass that area.

In short, the Disposal Areas are “within an underground coal mine” and part of “a permitted coal mine area” under the Mining Law for purposes of Section 620.450(b)(1). Therefore, they are subject to the Coal Reclamation Groundwater Quality Standards set forth in Section 620.450(b).

2. The Disposal Areas Are Part Of A “Coal Mine” For Purposes Of Section 620.450(b)(2).

The Disposal Areas are also part of a “coal mine” for purposes of Section 620.450(b)(2), which establishes that “[p]rior to completion of reclamation at a coal mine,” the GWQS “as specified in Sections 620.410(a) and (d), 620.420(a) and (d), 620.430 and 620.440 are not applicable to inorganic constituents and pH.” See Section 620.450(b)(2).

For purposes of Section 620.450(b)(2), the term “coal mine” must be read to include any coal mine area permitted pursuant to the Mining Law and the Mining Regulations. This is clear from the language in Section 620.450(b)(3), which establishes the standards that apply “[a]fter completion of reclamation at a coal mine.” In pertinent part, that regulation provides:

After completion of reclamation at a coal mine, the standards as specified in Sections 620.410(a) and (d), 620.430(a), 620.430, and 620.440 are applicable to inorganic constituents and pH, except:

- (A) The concentration of total dissolved solids (TDS) must not exceed:
 - (i) The post-reclamation concentration or 3000 mg/L, whichever is less, for groundwater within the permitted area; or
 - (ii) The post-reclamation concentration of TDS must not exceed the post-reclamation concentration or 5000 mg/L, whichever is less, for groundwater in underground coal mines and in permitted areas reclaimed after surface mining if the Illinois Department of Mines and Minerals and the Agency have determined that no significant resource groundwater existed prior to mining (62 Ill. Adm. Code 1780.21(f) and (g)); and
- (B) For chloride, iron, manganese and sulfate, the post-reclamation concentration within the permitted area must not be exceeded.
- (C) For pH, the post-reclamation concentration within the permitted area must not be exceeded within Class I: Potable Resource Groundwater as specified in Section 620.210(a)(4).

See Section 620.450(b)(3) (emphasis added). The term “coal mine” must necessarily include the entire “permitted area” to allow for application of Sections 620.450(b)(2) and 620.450(b)(3).

The Disposal Areas are thus both a part of a coal mine area permitted pursuant to the Mining Law and Mining Regulations. They are, therefore, subject to the alternative GWQS at Section 620.450(b)(2) until such time as reclamation is complete.

Here, reclamation at the Mine was not yet complete at the times of the alleged violations. “Reclamation” is not defined in Part 620. However, it is defined under the Mining Law to mean “conditioning areas affected by mining operations to achieve the purposes of this Act.” See 225 ILCS 720/1.03(a)(20).

Under the Mining Regulations, every application for a coal mining permit must contain a reclamation plan. See 62 Ill. Adm. Code 1784.13(a). Such a plan must include “[a] description of steps to be taken to comply with ... the Clean Water Act (33 U.S.C. 1251 et seq.) and all other applicable ... water quality laws and regulations.” See 62 Ill. Adm. Code 1784.13(b)(9). The Mining Regulations also require the application to contain a determination of the probable hydrologic consequences of the proposed operation on the proposed permit area, shadow area, and adjacent area, see 62 Ill. Adm. Code 1784.14(e)(1), and require OMM to provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. See 62 Ill. Adm. Code 1784.14(f)(1). If the determination of probable hydrologic consequences indicates that adverse impacts may occur to the hydrologic balance or that material is present that may result in the contamination of ground or surface water supplies, additional information must be provided to evaluate such consequences and plan remedial and reclamation activities. See 62 Ill. Adm. Code 1784.14(b)(3).

As a condition to obtaining a mining permit under the Mining Regulations, a permit applicant must file with OMM a bond in the amount required to ensure reclamation of the permit area. 17 Ill. Adm. Code 1800.11. OMM may release all or part of the bond if it is satisfied “that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished” in accordance with the regulatory schedules for reclamation. 17 Ill. Adm. Code 1800.40(c). No bond may be fully released until the reclamation requirements of the State Act and the permit are fully met. 17 Ill. Adm. Code 1800.40(c)(3). At the time of the alleged exceedances, reclamation at the Mine was not yet complete. As a result, neither HCC nor OMM had initiated an application for bond release.

Because the GWQS in Sections 620.410(a) and (d), 620.420(a) and (d), 620.430 and 620.440 thus are not applicable to inorganic constituents and pH, the alleged exceedances similarly did not violate Section 620.405, which provides:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

See Section 620.405. Establishing a violation of this Section requires the State to show that HCC's operation of the Mine has caused a GWQS in Subpart D to be exceeded. However, as shown above, HCC's operation has not caused such a standard to be exceeded, because the specific GWQS identified by the State, Section 620.410, does not apply.

This Board should therefore grant HCC summary judgment as to that portion of the State's Count III that is based on alleged violations of Section 620.410, including the allegations contained in Paragraphs 44, 45, and 47 of the Complaint.

B. The GWQS Established By Section 620.301 Do Not Apply Because The Disposal Areas Do Not Discharge To "Resource Groundwater."

In Count III, the State alleges that HCC's operation of the Disposal Areas violated Section 620.301. However, HCC's operation of the Disposal Areas is not subject to Section 620.301 because those areas do not discharge to a "resource groundwater."

Section 620.301(a) provides that:

No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that:

- (1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or
- (2) An existing or potential use of such groundwater is precluded.

By its terms, then, this regulation only prohibits certain discharges to a "resource groundwater." Under Section 620.201(a), all groundwaters of the State are designated as either Class I potable

resource groundwaters; Class II general resource groundwaters; Class III special resource groundwaters; or Class IV other groundwaters.

The groundwater at issue here is Class IV groundwater, which includes:

Groundwater within a previously mined area, unless monitoring demonstrates that the groundwater is capable of consistently meeting the standards of Section 620.410 or 620.420. If such capability is determined, groundwater within the previously mined area shall not be Class IV.

See Section 620.240(g). A “previously mined area” is “land disturbed or affected by coal mining operations prior to February 1, 1983.” See Section 620.110. Coal mining operations at the Mine began prior to February 1, 1983, so the groundwater at issue is clearly “within a previously mined area.” The groundwater therefore must be characterized as Class IV groundwater unless the State presents evidence establishing that the groundwater is capable of consistently meeting the standards of Section 620.410 (which apply to Class I groundwater) or 620.420 (which apply to Class II groundwater). The State has not presented — and in fact, cannot present — such evidence. To the contrary, the IEPA approval of a GMZ for the Mine constitutes that agency’s conclusion that those standards can not be met by HCC with reasonable effort.

Class IV groundwater is not “resource groundwater” for purposes of Section 620.301. The term “resource groundwater” means “groundwater that is presently being, or in the future is capable of being, put to beneficial use by reason of being of suitable quality.” See Section 620.110. Groundwater that is being or is capable of being put to beneficial use is by definition either Class I, Class II, or Class III groundwater. See Section 620.210(b) (defining Class I groundwater as any groundwater which is determined by the Board to be capable of potable use); Section 620.220(b) (defining Class II groundwater as any groundwater which is determined by the Board to be capable of agricultural, industrial, recreational or other beneficial uses); Section 620.230 (defining Class III groundwater as any groundwater determined by the

Board to be demonstrably unique and suitable for application of more stringent GWQS, vital for a particularly sensitive ecological system, or that contributes to a dedicated nature preserve). Section 620.301 therefore does not prohibit the release of any contaminant to Class IV groundwaters.

This Board should therefore grant HCC summary judgment as to that portion of the State's Count III that is based on alleged violations of Section 620.301, including the allegations in Paragraph 46 of the Complaint.

C. The GWQS Established By Section 302.208 And Section 302.304 Do Not Apply

In Count III, the State also alleges that HCC's operation of the Disposal Areas violated the water GWQS at Section 302.208 (formerly Rule 203(f)) and at Section 302.304 (formerly Rule 204(b)). However, HCC's operation of the Disposal Areas did not violate either such Section, as compliance with Part 302 Subpart B (including Section 302.208) and with Part 302 Subpart C (including Section 302.304) is required for only a subset of the mining activities subject to the State's Part 620 GWQS.

Under the alternative GWQS in Sections 620.450(b)(4)-(7), a refuse disposal area "not contained within the area from which overburden has been removed" is subject to the inorganic chemical constituent and pH requirements of 35 Ill. Adm. Code 302 Subparts B and C, except due to natural causes, "for such area that was placed into operation after February 1, 1983, and before the effective date of this Part [November 25, 1991], provided that the groundwater is a present or a potential source of water for public or food processing." See Section 620.450(b)(4)(A). For a refuse disposal area that was placed into operation prior to February 1, 1983 and modified after that date to include "additional area," such standards also apply to the "additional area." See Section 620.450(b)(5)(A). In contrast, those areas "placed

into operation prior to February 1, 1983 [that have] remained in continuous operation since that date” are subject instead to Section 620.440(c), which provides:

For groundwater within a previously mined area, the standards set forth in Section 620.420 must not be exceeded, except for concentrations of TDS, chloride, iron, manganese, sulfates, or pH. For concentrations of TDS, chloride, iron, manganese, sulfates, or pH, the standards are the existing concentrations.

See Section 620.450(b)(5)(A) and (B). The Disposal Areas are subject to Section 620.440(c) instead of Section 302 Subparts B and C, because they were “placed into operation prior to February 1983”; the areas have “remained in continuous operation since that date”; and the areas have not been modified to include “additional area.”

For disposal areas contained within an area from which overburden has been removed, Part 320 Subparts B and C are inapplicable. Application of Subparts B and C to such areas would make superfluous the more specific requirements at Section 620.450(b)(4) and Section 620.450(b)(5) requiring that refuse disposal areas not within such an area to comply with such Subparts. Under applicable principles of statutory construction, Illinois courts must construe laws relating to the same subject with reference to each other, so as to give effect to all of the provisions of each if possible. See Cinkus v. Village of Stickney Municipal Officers Electoral Board, 886 N.E.2d 1011 (Ill. 2008).

1. **The Disposal Areas Are Located Within Areas from Which Overburden Has Been Removed.**

The Disposal Areas are not subject to Section 620.450(b)(4) or (b)(5) because no such Disposal Area is a “refuse disposal area (not contained within the area from which overburden has been removed).” The reference to refuse disposal areas and coal preparation plants “not contained within the area from which overburden as been removed” clearly was intended to be applied to refuse disposal areas and coal preparation plants not within a permitted coal mine area.

This interpretation is necessary to harmonize the alternative GWQS with Part 1827 of the Mining Regulations, which establishes performance standards for “coal preparation plants not within the permit area for a specific mine,” other than those plants which are located at the site of coal production.

Alternatively, if this Board should find that the reference to refuse disposal areas and coal preparation plants “not contained within the area from which overburden as been removed” was intended to refer to certain refuse disposal areas and coal preparation plants within the permit area, the Disposal Areas would still be excluded from regulation under Sections 620.450(b)(4) and (b)(5) because they were constructed by removing material other than topsoil from the surface of the land overlying a coal deposit. Under the Mining Regulations, “overburden” merely means “material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.” 62 Ill. Adm. Code 1701.Appendix A (defining “overburden”). For the reasons stated above, the definitions in the Mining Regulations should be applied to the interpretation of terms in the groundwater quality standards pertaining to mining.

With respect to the meaning of the phrase “not located in an area from which overburden has been removed,” the term “overburden” must be interpreted to include those areas from which some, but not all, of the overburden has been removed. This is supported by the plain language of the Part 620 regulations. The regulatory language does not address “an area from which all overburden has been removed,” or even “an area from which the overburden has been removed.” In everyday usage, “an area from which overburden has been removed” would be understood as meaning an area from which any overburden has been removed. In the absence of a definition or administrative history to the contrary, the phrase must be interpreted according to the ordinary meaning of the language. In addition, if the regulation required removal of all overburden, the

regulation would apply only to surface mines and to portal areas of underground mines. This would be contrary to the purpose of the alternative GWQS for coal mine areas, which recognize that coal mining activities disturb the hydrologic balance of groundwater and that alternative standards are necessary.

2. Slurry No. 1A and Slurry No. 5 Are Not Subject to the Regulations Governing Disposal Areas Placed into Operation After February 1983 Because They Have Been in “Continuous Operation” Since Before February 1983 and Have Not Been Laterally Expanded.

Even if the Disposal Areas are somehow determined to be not within an area from which overburden has been removed, thus subjecting them to Sections 620.450(b)(4) and (b)(5), those Sections do not impose more stringent requirements. The trigger for application of the more stringent requirements is the date on which the Disposal Area was placed into operation.

The State acknowledges that construction and operation of the Disposal Areas began in 1968. See Complaint at Count I, ¶ 8. Also, the State acknowledges that Slurry No. 1, Slurry No. 2, the West Refuse Area, and the South 40 Refuse Area were placed into operation prior to February 1983. See Complaint at Count I, ¶ 15. The State also asserts, and HCC does not dispute, that Slurry No. 3 was placed into operation after February 1983. Id. However, the State asserts that Slurry No. 1A was placed into operation after November 1991, and that the West Refuse Area (now known as Slurry No. 5) was modified to include additional area through vertical expansion after February 1983 but before November 1991. Neither of these contentions is factually accurate.

a. As to Slurry No. 1/Slurry No. 1A

Slurry No. 1A was placed into operation prior to February 1983 because it is a “continuous operation” of Slurry No. 1. Slurry No. 1 was active by January 1971, and was actively used for slurry disposal through at least December 1979. Although Slurry No. 1 was not

actively used for slurry disposal between February 1981 and June 1982, Slurry No. 1 was still in “continuous operation” because it was operated in accordance with the approved refuse disposal plan for Eagle #2; carbon recovery operations were ongoing as of February 1984 and continued through February 1987; and both carbon recovery operations and active refuse disposal were ongoing by January 1988 and continued through July 12, 1993.

The State suggests that the fact that Subtitle D Permit No. 1992-MD-6977 was issued to HCC on August 24, 1992, is evidence that the Slurry 1A was placed into operation after November 25, 1991. However, the development of Disposal Area Slurry 1A only involved increasing the height of the existing levees around the perimeter of then-existing and active Disposal Area Slurry 1 with coal mining refuse, primarily gob, placed inside the interior walls of existing levees to a height approximately 20 feet higher than that of those existing levees so as to serve as containment for additional placement of slurry and other coal mining refuse. The construction and use of Disposal Area Slurry 1A did not involve any lateral extension in any direction of the existing and active Disposal Area Slurry 1, only a modification of that Disposal Area by the additional placement of additional slurry and other coal mining refuse onto the existing area to a height not previously approved under Surface Mining Permit 34. Thus, the development and operation of Disposal Area Slurry 1A did not increase the footprint, *i.e.*, the surface area, of that Disposal Area. During the construction of the new levees for this Disposal Area, the disposal of slurry in that Disposal Area continued. Brown at ¶ 12.

Although the term “continuous operation” is not defined by Illinois’s groundwater quality standards, the definition of the term is apparent with reference to the Mining Regulations. Under Section 1817.131(b), each person who conducts underground mining activities must submit to IDNR a notice of intention to cease or abandon operations before any temporary cessation of

mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond thirty days. See 62 Ill. Adm. Code 1817.131(b). No “temporary cessation” of the use of Slurry No. 1 occurred for purposes of Section 1817 because operation of that area continued in accordance with the approved refuse disposal plan, and the State has presented no evidence that HCC submitted any such notice required by Section 1817.31(b), so the State should not be allowed to argue here that use of Slurry No. 1 was not continuous for purposes of the GWQS. Also, nothing in Part 620 requires a showing that a disposal area was used for active slurry disposal to establish “continuous operation.” Interpreting the term “continuous operation” differently for purposes of the GWQS would be incongruous.

b. As to West Refuse Area/Slurry No. 5

Slurry No. 5, previously known as the West Refuse Area, was active by January 1971, and was actively used for slurry disposal through December 1972. Although Slurry No. 5 was inactive and revegetated from April 1978 through July 1984, it was reactivated for disposal as of November 1984, and active slurry disposal had resumed as of July 1985 and continued through March 1991.

Slurry No. 5 was in “continuous operation” throughout this time because operation of Slurry No. 5 continued in accordance with the approved refuse disposal plan. The area was revegetated, but was not reclaimed. Also, no “additional area” was added to Slurry No. 5. As the State acknowledges, the only modification made to the West Refuse Area was a vertical extension. A vertical extension does not add “additional area,” as it simply adds coal refuse to the surface of an existing refuse disposal area during the continuous operation of such area. This does not change the “area” of the existing refuse disposal area in the commonly understood

definition of such term, i.e., the product of the length and width of the area. Depth or height is not a factor, as this would instead represent volume.

In any case, HCC's operation of the Mine does not violate Section 302.304, because under Section 620.130, groundwater "is not required to meet the general use standards and public and food processing water supply standards of 35 Ill. Adm. Code 302 Subparts B and C." See 35 Ill. Adm. Code 620.130.

This Board should therefore grant HCC summary judgment as to that portion of Count III that is based on alleged violations of Section 302.304 (formerly Rule 204(b)), including the allegations made at Paragraphs 40, 42, and 44 of the Complaint. Also, this Board should grant HCC summary judgment as to that portion of Count III that is based on alleged violations of Section 302.208 (formerly Rule 203(f)), including the allegations made at Paragraph 41 of the Complaint.

D. HCC's Liability, If Any, Does Not Extend Past December 5, 2006

To the extent that the State contends that the facts establish continuing violations, which HCC vigorously disputes, any such liability by HCC does not extend past December 5, 2006 because the establishment of a GMZ for the Mine on such date made the GWQS inapplicable to the groundwater within the GMZ.

In its Complaint, the State seeks assessment of a civil penalty against HCC of \$50,000 for each violation of the Act, "and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter." Complaint at Count I, Prayer for Relief; Count II, Prayer for Relief; and Count III, Prayer for Relief. The State has not, however, alleged any fact that, if proven, would evidence a continuing violation of the Act.

The Complaint does not identify any reported exceedance occurring after March 15, 2000 for any GWQS it contends apply. The alleged exceedances occurring prior to March 15, 2000 do not raise a genuine issue of material fact regarding whether there is an ongoing violation of any applicable GWQS. Accord Allen County Citizens for the Environment, Inc. v. BP Oil Co., 762 F. Supp. 733, 741 (N.D. Ohio 1991) (holding that the presented evidence of past exceedances did not support jurisdiction under the Clean Water Act citizen suit provision, 33 U.S.C. 1365, which required a showing of a continuing violation).

In any event, Section 620.250(a) provides:

Within any class of groundwater, a groundwater management zone may be established as a three dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants from a site:

- 1) That is subject to a corrective action process approved by the Agency; or
- 2) For which the owner or operator undertakes an adequate corrective action in a timely and appropriate manner and provides a written confirmation to the Agency. Such confirmation must be provided in a form as prescribed by the Agency.

35 Ill. Adm. Code 620.250(a).

On May 6, 2005, HCC submitted a proposal to IEPA seeking the establishment of a GMZ for the Mine under Section 620.250(a). Fry at ¶¶ 4-5. IEPA approved the Mine GMZ on December 6, 2006. Fry at ¶¶ 6, Ex. 1.

Consequently, any chemical constituent in groundwater within the Mine GMZ is subject to the alternative GWQS in Section 620.450. Pursuant to Section 620.450(a)(3), the standards specified in Sections 620.410, 620.420, 620.430, and 620.400 are not applicable to a released chemical constituent prior to completion of a corrective action described in Section 620.450(a), provided that the initiated action proceeds in a timely and appropriate manner. See also Section

620.201 (designating all groundwaters of the State as Class I, Class II, Class III, or Class IV groundwater; a GMZ in accordance with Section 620.250; or a GMZ established under Section 740.530). Therefore, HCC's continuing liability for any violations of the GWQS specified in Sections 620.410, 620.420, 620.430, and 620.440 — if any — does not extend past December 5, 2006, the last day before the Mine GMZ was established.

VII. CONCLUSION

For the reasons discussed above, the GWQS established by Section 620.410, Section 620.301, Section 302.208, and Section 302.304 do not apply to HCC's operation of the Disposal Areas at the Mine. Rather, it is the GWQS established by Section 620.440(c) that are applicable to those waters prior to the completion of required reclamation at the Mine. Because such reclamation has not yet been completed, no applicable GWQS has been exceeded; and, therefore, no violations of the State Act as alleged by the State in Count III of its Complaint have occurred.

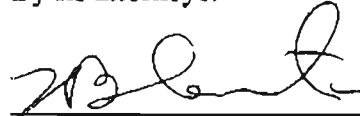
WHEREFORE, HCC respectfully requests the Board to grant HCC's Motion, to enter summary judgment in HCC's favor and against the State with respect to all allegations of violations asserted by the State in Count III of its Complaint, and to grant HCC all other such relief this Board deems just and appropriate.

Date: December 20, 2010

Respectfully submitted,

HERITAGE COAL COMPANY, LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY, LLC**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 99-134
)
 HERITAGE COAL COMPANY LLC,)
)
 Respondent.)

RECEIVED
CLERK'S OFFICE
DEC 27 2010
STATE OF ILLINOIS
Pollution Control Board

RESPONDENT HERITAGE COAL COMPANY LLC'S NOTICE OF FILING
AFFIDAVITS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

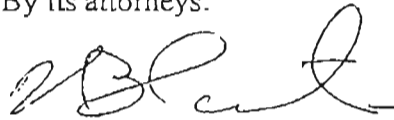
Respondent, Heritage Coal Company LLC ("HCC"), hereby files the following affidavits in support of HCC's motion for partial summary judgment, filed herewith:

- Affidavit Of Eric P. Fry, dated December 16, 2010;
- Affidavit Of Michael L. Munday, dated December 16, 2010;
- Affidavit Of Scott McGarvie, dated December 20, 2010;
- Affidavit Of Keith Brown, dated December 20, 2010; and
- Affidavit Of W.C. Blanton, dated December 20, 2010.

Date: December 20, 2010 Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY LLC**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
v.) PCB 99-134
)
HERITAGE COAL COMPANY, LLC,)
)
 Respondent.)

AFFIDAVIT OF ERIC FRY

Eric P. Fry, being first duly sworn, states:

1. The statements made in this affidavit are based upon my personal knowledge, and I am competent to testify thereto.

2. I have been employed by Peabody Investments Corp., a subsidiary of Peabody Energy Corporation ("Peabody Energy"), since 2005. My current job title is Director of Regulatory Affairs. In that capacity, I have responsibility for, among other things, certain aspects of regulatory and technical environmental issues involving the coal mining operations of Peabody Energy-affiliated companies.

3. I obtained a Bachelor of Science degree in Geology from San Diego State University in 1980 and a Master of Science in Geology from Indiana University in 1993. Since 1989, I have managed regulatory and technical environmental issues for companies in the business of coal mining.

4. From approximately early 2005 through early December 2006, I had responsibility for obtaining the agreement of the Illinois Environmental Protection Agency ("IEPA") to the establishment of a groundwater management zone applicable to groundwater at



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

December, 6 2006

Mr. Eric P. Fry
Black Beauty Coal Company
414 South Fares
P.O. Box 312
Evansville, IN 47702

Dear Mr. Fry:

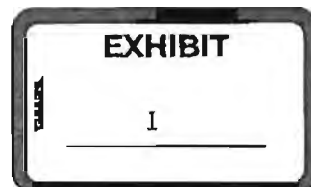
This letter is in response to Peabody Coal Company's (PCC) application for the establishment of a Groundwater Management Zone (GMZ) prepared by Blackwell Sanders Peper Martin LLP, dated November 17, 2006 for the PCC Eagle # 2 Mine, located near Shawneetown, Gallatin County. Pursuant to the provisions of Title 35, Environmental Protection; Subtitle F, Public Water Supplies; Section 620.250, Groundwater Management Zone of Chapter 1, the Rules and Regulations of the Illinois Pollution Control Board, PCC is seeking to establish a GMZ at and in the vicinity the Eagle # 2 property. The proposed GMZ includes more than 700 acres in area and extends from ground surface to the base of the sand and gravel of the Henry Formation. The specific dimensions and operation of the GMZ are as described in the GMZ application submitted by PCC on November 20, 2006. In accordance with 35 Ill. Adm. Code 620.250, the GMZ application is hereby approved, and a GMZ is established at the Eagle # 2 Mine, as described in the in the PCC application.

I trust this responds to your needs. If you have further questions contact me at 217/785-4787.

Sincerely,

William E. Buscher, P.G.
Supervisor, Hydrogeology and Compliance Unit
Groundwater Section
Division of Public Water Supplies
Bureau of Water

- CC: Doug Scott, Director
- Marcia Willhite, Bureau Chief
- Joey Logan-Wilkey, DLC
- Larry Crislip, Marion Region
- Mike Garretson, CAS
- Rick Cobb, Groundwater
- Carl Kamp, Groundwater



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 99-134
)	
HERITAGE COAL COMPANY, LLC,)	
)	
Respondent.)	

AFFIDAVIT OF MICHAEL L. MUNDAY

Michael L. Munday, being first duly sworn, states:

1. Statements made in this affidavit are based upon my personal knowledge, and I am competent to testify thereto.

2. I am employed by Patriot Coal Corporation ("Patriot Coal"). My current job title is Manager, Permitting. In that capacity, I have responsibility for, among other things, Patriot Coal's environmental law permit program in Kentucky and Illinois, including the preparation and pursuit of permit applications for Patriot Coal and Patriot Coal affiliate mining operations, maintaining files on permitting matters on such permitting matters, communication with federal and state environmental agencies regarding regulatory matters, and generally serving as Patriot Coal's liaison to such agencies.

3. I received a Bachelor of Science degree in Civil Engineering (Mining Option) from the University of Kentucky in May 1974. I am a licensed Professional Engineer in Illinois, Indiana, Kentucky, Ohio, and Tennessee.

4. I was employed by Peabody Energy Corporation ("Peabody Energy") or one of its affiliated companies from May 1974 through November 2007. In November 2007, I terminated my employment with Peabody Energy and began my employment with Patriot Coal in connection with Peabody Energy's divestiture of Patriot Coal and certain related assets, including the Eagle #2 Mine (the "Mine"), an underground coal mine located in Gallatin County, Illinois.

5. Since Patriot Coal's separation from Peabody Energy, I have had responsibility for maintaining all environmental law permitting requirements for the Mine, specifically including all permits for the Mine's lawful operation issued by the Office of Mines and Minerals ("OMM") of the Illinois Department of Natural Resources under the applicable Illinois mining laws.

6. Since I have assumed such responsibilities, ongoing activities at the Mine have been undertaken pursuant to Surface Mining Permit 34 issued by OMM, as amended from time to time, and now held by Heritage Coal Company LLC ("HCC"), a Patriot Coal affiliate. This permit addresses and establishes the terms and conditions of, among other things, HCC's maintenance of all coal mining refuse disposal areas at the Mine, including the bonding requirements relating to reclamation following the cessation of active operations at that facility.

7. To date, HCC has not sought to be released from the reclamation bonding obligations under Surface Mining Permit 34.

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4. For a period of time beginning in the early-to-mid 1990s, I had responsibility for certain environmental matters at the Eagle #2 Mine (the "Mine"), an underground coal mine located in Gallatin County, Illinois. Primarily, I participated with engineering, environmental, operations, legal, and management personnel in addressing groundwater quality issues and undertaking groundwater remediation activities at the Mine. In carrying out those responsibilities, I had occasion to review certain Peabody Coal Company records maintained in the ordinary course of its business regarding historical mining and related activity at the Mine, including historical coal mining refuse disposal practices at the Mine, from the time active mining activity began at that facility through the cessation of active mining at that facility and to otherwise become informed regarding some of those practices.

5. In the course of this work, I became familiar with the physical condition of the areas of the Mine used for the disposal of coal mining refuse, primarily in the nature of gob and slurry (the "Disposal Areas"). At the time I assumed the responsibilities described above, land reclamation so as to establish the approved post-mining land uses for most of the Disposal Areas had not yet begun. Land reclamation of the Disposal Areas in this regard was not completed until a number of years later.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 99-134
)	
HERITAGE COAL COMPANY LLC,)	
)	
Respondent.)	

AFFIDAVIT OF KEITH BROWN

Keith Brown, being first duly sworn, states:

1. The statements made in this affidavit are based upon my personal knowledge, and I am competent to testify thereto.
2. I am employed by Green River Collieries, LLC. My current job title is Director of Engineering. In that capacity, I have responsibility for overseeing all engineering duties and activities for the company's mines and coal reserves.
3. I received a Bachelor of Science degree in Mining Engineering from the University of Kentucky in 1981 and a Master of Business Administration degree from the University of Evansville in 1994. I am a licensed Professional Engineer in Kentucky. Since 1981, I have been a practicing mining engineer for a number of companies in the coal mining industry.
4. From September 1, 1981 through January 7, 2005, I was employed by Peabody Coal Company ("PCC"). From early 1991 through late 1994, I served as the Mine Engineer at PCC's Eagle #2 Mine (the "Mine"), an underground coal mine located in Gallatin County,

Illinois. As such, I was responsible for, among other things, working with other personnel to ensure compliance with permitting, bonding, and other regulatory matters.

5. At the time I became the Mine Engineer at the Mine, operations at the Mine were carried out pursuant to Surface Mining Permit 34, as amended from time to time, issued to PCC by the Office of Mines and Minerals of the Illinois Department of Natural Resources. In particular, the coal mining refuse disposal and other activities carried out at the areas of the Mine used for refuse disposal (the "Disposal Areas") were specifically addressed and authorized by the provisions of Permit 34, as amended from time to time, through the cessation of active mining operations and related coal mining refuse disposal operations at the Mine in 1993.

6. At the time I became the Mine Engineer at the Mine, all activities carried out in the Disposal Areas pursuant to the relevant provisions of Permit 34 were subject to bonding requirements to ensure reclamation of those areas. Those bonding requirements remained in full force and effect through the cessation of coal mining refuse disposal activities at the Mine.

7. In late 1991, some time after I assumed my duties as the Mine Engineer for the Mine, new groundwater quality standards under the Illinois Groundwater Protection Act became effective.

8. In late 1993 or early 1994, as part of PCC's ongoing evaluation of groundwater quality at and in the vicinity of the Mine, I developed a chronology of mining refuse disposal activities at the Mine from the beginning of Mine active operations in 1968 through the cessation those operations on July 12, 1993. A copy of the chronology I developed and prepared in this regard (the "Chronology") is attached to this Affidavit as Exhibit 1.

9. In preparing the Chronology, I reviewed correspondence, engineering documents, and other documents and records relating to permitting, coal mine refuse disposal plans, ground

water quality monitoring, ground water pumping wells, and other matters relevant to the groundwater quality evaluation project of which the Chronology was a part, all of which documents and records were maintained by PCC in the ordinary course of its business. Among the documents I reviewed were the aerial photographs of the Mine taken at PCC's request approximately every six months for use by PCC personnel in connection with ongoing Mine operations and activities. I also interviewed those PCC personnel who had personal knowledge of the Mine's coal mining refuse disposal practices and activities as an aid to my review of the aerial photographs that depicted the condition of the Disposal Areas, all of which were clearly identifiable on the aerial photographs, at that point in time. (As used in the Chronology, the term "inactive" in reference to a given Disposal Area merely means that refuse placement was not being carried out in that Disposal Area at the time the aerial photograph in question was taken, not that refuse placement in that Disposal Area had been terminated.)

10. Based upon the methodology employed in the preparation of the Chronology and the amount and apparent accuracy of the information available to me in connection with this project, I believe that the information contained in the Chronology regarding the status of the Disposal Areas at the Mine over time as set forth in the Chronology is accurate and reliable.

11. During that time I served as the Mine Engineer at the Mine, carbon recovery activities were carried out in some of the Disposal Areas. The information I developed in the course of my work in preparing the Chronology as described above indicates that throughout the period of active mining operations at the Mine and the associated generation of coal mining refuse, at least as early as early 1984, Disposal Areas were used for refuse placement, followed by carbon recovery activities, followed by further refuse placement on an ongoing and repetitive basis in a continuing cycle of refuse disposal and carbon recovery.

12. I was personally directly involved in the development of Disposal Area Slurry 1A, as to both permitting and implementation. This involved increasing the height of the existing levees around the perimeter of then-existing and active Disposal Area Slurry 1 with coal mining refuse, primarily gob, placed inside the interior walls of existing levees to a height approximately 20 feet higher than that of those existing levees so as to serve as containment for additional placement of slurry and other coal mining refuse. The construction and use of Disposal Area Slurry 1A did not involve any lateral extension in any direction of the existing and active Disposal Area Slurry 1, only a modification of that Disposal Area by the additional placement of additional slurry and other coal mining refuse onto the existing area to a height not previously approved under Surface Mining Permit 34. Thus, the development and operation of Disposal Area Slurry 1A did not increase the footprint, i.e., the surface area, of that Disposal Area. During the construction of the new levees for this Disposal Area, the disposal of slurry in that Disposal Area continued.

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FURTHER AFFIANT SAYETH NAUGHT.

Keith Brown

Keith Brown

COMMONWEALTH OF KENTUCKY)

) ss.

COUNTY OF WEBSTER)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this
20 day of ~~December~~ 2010.

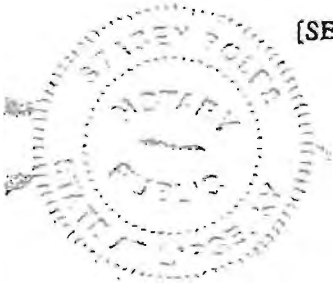
Stacey Bales

Notary Public

My Commission Expires:

9-13-2012

[SEAL]



Chronological History of Eagle #2 Mine's Slurry Lakes, Refuse Disposal Areas, and Associated Happenings/Events (taken from aerial photo over-flights)

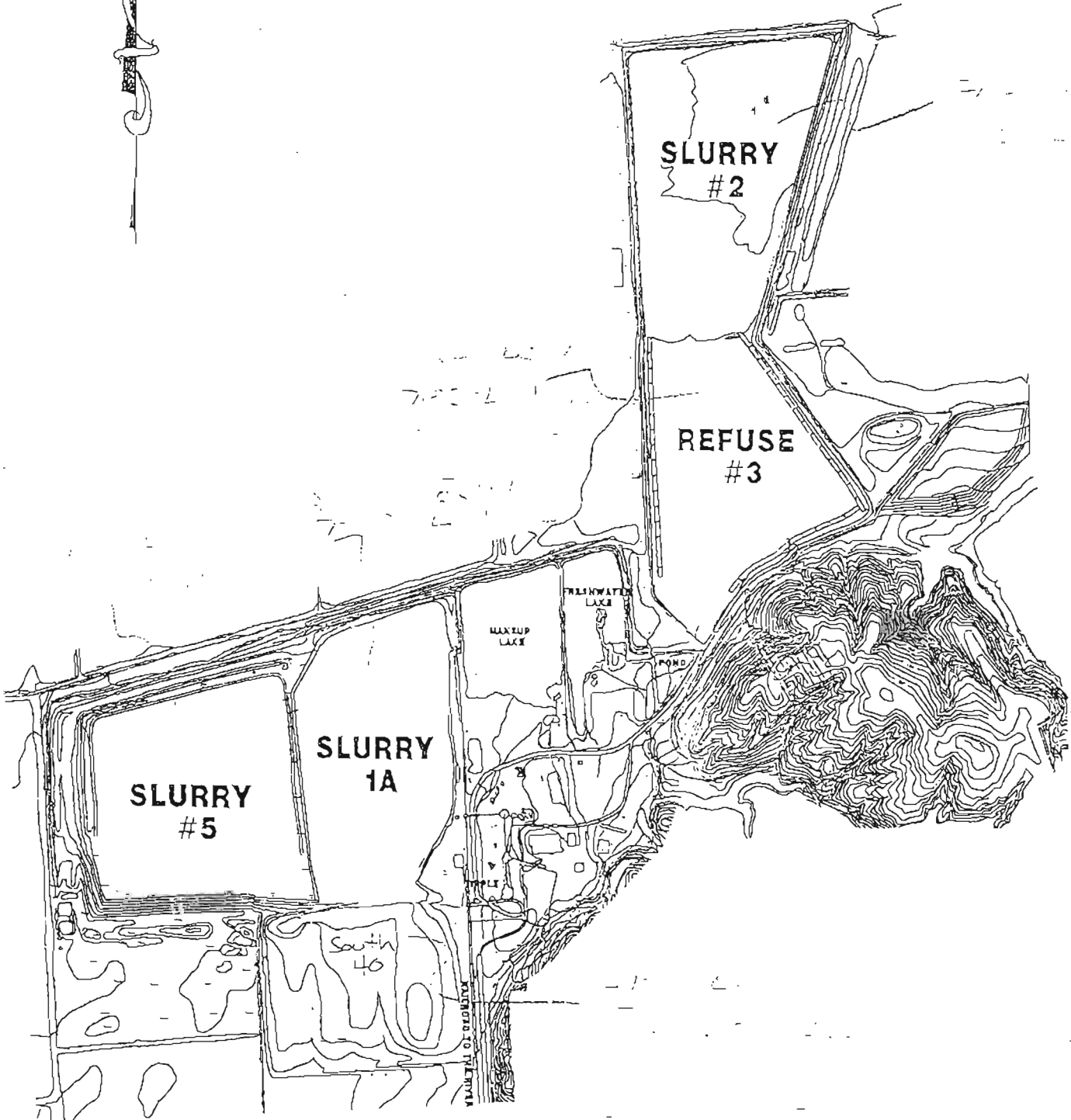
<u>DATE</u>	<u>ITEM OR EVENT</u>
4/67	- Aerial photography survey of the entire Eagle #2 Complex.
1/71	- Slurry #1 - active, slurry disposal. West Refuse Area (current day Slurry #5) - active, refuse disposal in trenches dug by a dragline. The top 10 to 12 feet of soil was used in construction of levees. The sand was exposed in many places.
12/72	- Slurry #1 - active, slurry disposal. West Refuse Area - active, refuse disposal in trenches dug by a dragline.
4/78	- Slurry #1 - active, slurry disposal, approximately 60 % of capacity. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. Emergency Slurry Area - constructed just West of Slurry #1.
12/78	- Slurry #1 - active, slurry disposal, approximately 85% of capacity. Slurry #2 - construction completed. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. Emergency Slurry Area - inactive.
12/79	- Slurry #1 - active, slurry disposal, approximately 95% of capacity. Slurry #2 - active, approximately 15% of capacity. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. West Portal - under construction. Emergency Slurry Area - inactive.
2/81	- Slurry #1 - inactive. Slurry #2 - active, approximately 30% of capacity. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. Emergency Slurry Area - active, contains some slurry.
5/81	- Slurry #1 - inactive. Slurry #2 - active, slurry disposal. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. Emergency Slurry Area - active, refuse disposal.
1/82	- Slurry #1 - inactive. Slurry #2 - active, slurry disposal, 80% of capacity. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal suspended. Emergency Slurry Area - active, refuse disposal running North and South.
6/82	- Slurry #1 - inactive. Slurry #2 - active, slurry disposal. West Refuse Area - inactive, revegetated. South Forty Refuse Area - active, refuse disposal in trenches dug by a dragline. Emergency Slurry Area - active, refuse disposal. Saline Valley Conservancy District Wells constructed.

EXHIBIT

1


- 2/84 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - active, slurry disposal.
West Refuse Area - inactive, revegetated.
South Forty Refuse Area - active, refuse disposal in trenches.
Emergency Slurry Area - active, refuse disposal.
- 7/84 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - active, slurry disposal.
West Refuse Area - inactive, revegetated.
South Forty Refuse Area - active, refuse disposal in trenches.
Emergency Slurry Area - active, refuse disposal.
Production Well #9 - constructed.
- 11/84 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - active, slurry disposal.
Slurry #3 - constructed.
West Refuse Area - active, reactivated for refuse disposal (pile).
South Forty Refuse Area - active, refuse disposal in trenches.
Emergency Slurry Area - active, refuse disposal.
- 7/85 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - active, slurry disposal.
Slurry #3 - active, began slurry disposal.
West Refuse Area - active, refuse disposal (pile).
South Forty Refuse Area - inactive, reclamation on disturbed areas.
Emergency Slurry Area - inactive.
- 12/85 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - inactive.
Slurry #3 - active, slurry disposal.
West Refuse Area - active, refuse disposal (pile).
South Forty Refuse Area - inactive, reclamation.
Emergency Slurry Area - inactive.
- 7/86 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - inactive.
Slurry #3 - active, slurry disposal.
West Refuse Area - active, refuse disposal (pile).
South Forty Refuse Area - inactive, reclamation.
Emergency Slurry Area - active, refuse disposal. (Becomes a part of West Refuse area.)
Production Well #19 - constructed.
- 2/87 - Slurry #1 - inactive, carbon recovery operations.
Slurry #2 - inactive.
Slurry #3 - active, slurry disposal.
West Refuse Area - active, refuse disposal (levee construction).
South Forty Refuse Area - inactive, reclamation on East side.
Sediment Pond U008 - constructed.
- 1/88 - Slurry #1 - active, carbon recovery operations, refuse disposal.
Slurry #2 - inactive.
Slurry #3 - active, slurry disposal.
Slurry #5 (formerly West Refuse Area) - active, slurry disposal.
South Forty Refuse Area - inactive, some reclamation work.

- 7/89 - Slurry #1 - active, carbon recovery operations, refuse disposal.
Slurry #2 - inactive.
Slurry #3 - active, perimeter refuse disposal.
Slurry #5 - active, slurry disposal.
South Forty Refuse Area - reclaimed.
- 7/90 - Slurry #1 - active, carbon recovery operations, refuse disposal.
Slurry #2 - inactive.
Slurry #3 - active, perimeter refuse disposal, carbon recovery operations.
Slurry #5 - active, slurry disposal.
South Forty Refuse Area - reclaimed.
- 3/91 - Slurry #1 - active, carbon recovery operations, refuse disposal.
Slurry #2 - inactive.
Slurry #3 - active, perimeter refuse disposal, carbon recovery operations.
Slurry #5 - active, slurry disposal.
South Forty Refuse Area - reclaimed.
New South Refuse Area (south of Slurry #1 & #5) - active, refuse disposal.
- 7/91 - Slurry #1 - active, slurry disposal resumes, refuse disposal (levee construction).
Slurry #2 - inactive.
Slurry #3 / Refuse #3 - active, refuse disposal (pile), carbon recovery operations.
Slurry #5 - inactive.
South Forty Refuse Area - reclaimed.
New South Refuse Area - active, refuse disposal.
- 1/92 - Slurry #1 - active, slurry disposal, refuse disposal (levee construction).
Slurry #2 - inactive.
Slurry #3 / Refuse #3 - active, refuse disposal (pile), carbon recovery operations.
Slurry #5 - inactive.
South Forty Refuse Area - reclaimed.
New South Refuse Area - active, refuse disposal.
- 9/92 - Slurry #1 - active, slurry disposal, refuse disposal (levee construction).
Slurry #2 - inactive.
Slurry #3 / Refuse #3 - active, refuse disposal (pile).
Slurry #5 - inactive.
South Forty Refuse Area - reclaimed.
New South Refuse Area - inactive.
Production Well #21 - constructed.
- 7/12/93 - Last production day at Eagle #2 Mine.
Slurry #1 - active, slurry disposal, refuse disposal (levee construction).
Slurry #2 - inactive
Slurry #3 / Refuse #3 - active, refuse disposal (pile).
Slurry #5 - inactive.
South Forty Refuse Area - reclaimed.
New South Refuse Area - inactive.



Peabody COAL COMPANY ENGINEERING DEPARTMENT PA. 901 527 EMANUELTON, ILLINOIS 4901	
EAGLE #2 MINE (0090) GENERAL LOCATION MAP	
ENGINEER: E. H. BROWN	SCALE: NONE
TECHNICIAN: R. VISE	DATE: 01/30/41

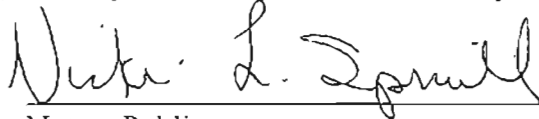
FURTHER AFFIANT SAYETH NAUGHT.



W.C. Blanton

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 16th day of December, 2010.



Notary Public

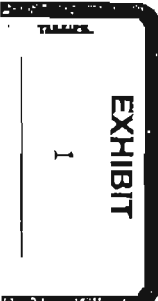
My Commission Expires:

VICKI L. SPRUILL
Notary Public - Notary Seal
[STATE OF MISSOURI
Jackson County
My Commission Expires: Jan. 14, 2011
Commission # 07435573

Coal Mine Permit Boundaries for the Permanent Program

REC	PERMIT_ID	PERMITTEE	MINE	PIT_PORTAL_NAME	DATE_ISSUED	ACRES	PERMIT_TYPE	UMTY_TYPE	UMTY	LRD_STATUS_CODE	LRD_STATUS_TEXT	LRD_STATUS_DATE	PERMIT_STATUS	NATIONAL_ID	CONTACT	DATA_STATUS	OBJECTID
1	034	HERITAGE COAL COMPANY, LLC	Eagle No.2	Eagle 2	1.Aug.1985	698.38978487	U	URP	1081	RC	In redemption,has outstanding bond	1.Aug.2005		IL_034	IL DNR OMM LRD		384
2	034	HERITAGE COAL COMPANY, LLC	Eagle No.2	Eagle 2	1.Aug.1985	5.2080583	U	URP	1081	RC	In redemption,has outstanding bond	1.Aug.2005		IL_034	IL DNR OMM LRD		385
3	034	HERITAGE COAL COMPANY, LLC	Eagle No.2	Eagle 2	1.Aug.1985	4.21655336	U	URP	1081	RC	In redemption,has outstanding bond	1.Aug.2005		IL_034	IL DNR OMM LRD		386
4	034	HERITAGE COAL COMPANY, LLC	Eagle No.2	Eagle 2	1.Aug.1985	0.55071074	U	URP	1081	RC	In redemption,has outstanding bond	1.Aug.2005		IL_034	IL DNR OMM LRD		387
5	034	HERITAGE COAL COMPANY, LLC	Eagle No.2	Eagle 2	1.Aug.1985	0.25071034	U	URP	1081	RC	In redemption,has outstanding bond	1.Aug.2005		IL_034	IL DNR OMM LRD		388

[Zoom to these records](#)



Date: December 20, 2010

Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY LLC**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 HERITAGE COAL COMPANY LLC,)
)
 Respondent.)

PCB 99-134

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CLERK'S OFFICE
DEC 27 2010
STATE OF ILLINOIS
Pollution Control Board

RESPONDENT HERITAGE COAL COMPANY LLC'S
NOTICE OF MISNOMER

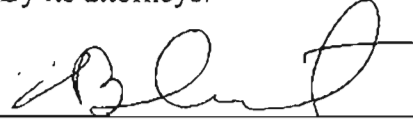
Respondent, Heritage Coal Company LLC ("HCC"), hereby informs the Board and the State that HCC's correct full name is "Heritage Coal Company LLC" rather than "Heritage Coal Company, LLC" as erroneously stated in HCC's Notice Of Name Change For Respondent, filed on or about May 12, 2008. HCC apologizes to the Board and the State for any inconvenience this inadvertent misnomer may have caused.

Date: December 20, 2010

Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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**ATTORNEYS FOR RESPONDENT,
HERITAGE COAL COMPANY LLC**