BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 99-134
PEABODY COAL COMPANY, a Delaware corporation, Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Jane E. McBride (via FedEx)
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The undersigned certifies that the original and four true and correct copies of PCC's Motion For Leave To Serve Interrogatories, and of Affidavit Of W.C. Blanton Relating To PCC's Motion For Leave To Serve Interrogatories, and of Affidavit Of Stephen F. Hedinger Relating To PCC's Motion For Leave To Serve Interrogatories were filed with the Clerk of the Pollution Control Board, and one true and correct copy each was served upon the above-identified individuals, via U.S. mail with first-class postage affixed or FedEx, by enclosing the same in envelopes properly addressed, and by depositing said envelopes in an appropriate U.S. Post Office mail box or FedEx dropbox, on the 14th day of July, 2003, before 7:00 p.m.

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	)	
Complainant,	)	
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v.	)	PCB 99-134
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PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
Respondent.	)	

PCC'S MOTION FOR
LEAVE TO SERVE INTERROGATORIES

Respondent, Peabody Coal Company ("PCC"), hereby moves the Hearing Officer pursuant to 35 Ill. Adm. Code 101.616(b)[1] for leave to serve Complainant, People of the State of Illinois ("State"), its amended third, fourth, fifth and sixth sets of interrogatories to the State, copies of which are attached hereto as Exhibits A, B, C and D, respectively, for the reasons discussed fully below. In short, (a) the interrogatories PCC wishes to direct to the State seek "relevant information and information calculated to lead to relevant information," in connection with the issues in this case, and (b) PCC will be materially prejudiced in its ability to develop and present its defenses to the claims asserted against it by the State in this action if it is not granted leave to serve those Interrogatories as requested.

I. INTRODUCTION

The State's complaint against PCC is 53 pages long, alleges more than 500 violations of Illinois environmental laws involving five separate chemicals of concern ("COCs"),[2] is based upon PCC's conduct over a period of more than 40 years, and seeks both a huge civil penalty and

[1] 35 Ill. Adm. Code 101.616 will be referenced hereafter as Section 101.616.

[2] These COCs are sulfates, chlorides, total dissolved solids (TDS), iron, and manganese. (TDS is not really a chemical, but it is appropriate to consider TDS as a COC as a matter of convention in this case).

extensive injunctive relief. Given the nature and magnitude of this case as established by the State, PCC has no alternative but to vigorously defend itself against the State's claims.

Litigation of a case of this magnitude and complexity is inevitably a major undertaking that consumes a great deal of every party's resources. This particular case involves a plethora of legal and factual issues and disputes between the parties, many of which are far from ordinary.

By its pleadings and other legal papers filed in this case, the discovery requests that it has directed to PCC, and the parties' discussions both before and since the State filed this enforcement case with the Board, the State has made clear its views that this case involves major transgressions of the Illinois environmental laws, that the alleged violations of those laws by PCC have had serious environmental consequences, and that PCC should be subjected to extraordinary penalties and other sanctions for its conduct and the consequences thereof at issue. It is PCC's view, however, that many of the violations of law alleged by the State are no such thing; that in any event PCC's conduct now complained of was long condoned by the State in such a manner as to preclude the State from now seeking the imposition of sanctions against PCC for the consequences of that conduct; that the actual environmental impact of PCC's conduct at issue is of little or no practical significance; and that the State's positions taken in this case vis-a-vis both PCC's conduct, the consequences thereof, and what constitutes appropriate sanctions therefor all are grossly unreasonable when measured against the State's treatment of other parties similarly situated to PCC.

Although this case was filed quite sometime ago, it has proceeded slowly to this point. Indeed, the State did not finalize its formulation of the claims it asserts against PCC in this case until November 21, 2002, and the issues were not joined in this case by the filing of PCC's answer to the State's complaint until December 20, 2002. In the meantime, the parties have

conducted some basic discovery in the case by directing interrogatories and requests for the production of documents to each other.[3]

The early rounds of discovery requests directed to the State by PCC in late 1999 and early 2000 consisted of relatively broad requests for information and documents containing information regarding the regulation of PCC's mining and mining-related activities at the company's Eagle No. 2 Mine ("Mine"), which is the subject of this proceeding. In that coal mining has long been highly regulated by the State and that PCC's mining and mining-related activities at the Mine have been ongoing since 1968, it is not surprising that the State has produced a substantial number of documents in response to PCC's discovery requests to date, likely totaling more than 20,000 pages.

For its part, the State has directed a substantial number of discovery requests to PCC, both at the beginning of this case and more recently, most of which seek information or documents containing information relevant to PCC mining and mining-related activities at the Mine and the environmental consequences thereof. In response to those requests, PCC has provided substantive responses to a very large number of interrogatories directed to it by the State and has produced a substantial number of documents to the State, totaling almost 20,000 pages to date.

Now that the State has set forth the specifics of its claims against PCC and PCC has set forth the specifics of its defenses to those claims, this case has reached the point where the parties can reasonably formulate more focused (although not necessarily more limited) discovery requests to address the claims and defenses thereto now established by the pleadings in this case

[3] PCC also directed some requests for admissions to the State in an effort to most efficiently establish what PCC considers to be certain basic facts relevant to the issues in this case; but the State has successfully resisted admitting those matters to date.

and the issues raised thereby. Accordingly, on May 23, PCC directed four sets of interrogatories and four sets of requests for the production of documents to the State.

The State responded by moving the Hearing Officer for a protective order that would shield the State from having to provide a substantive response or even a specific objection to any of these individual discovery requests. As the parties are presently involved in the separate process of briefing their positions with respect to the State's Motion For Protective Order, PCC will not address that motion further here except to note that, as part of its response to the State's motion, it withdrew the entirety of all four sets of interrogatories at issue. PCC has now amended certain of those interrogatories, thereby creating its amended third, fourth, fifth, and sixth sets of interrogatories directed to the State and now moves the Hearing Officer pursuant to Section 101.616(b) for leave to serve those interrogatories upon the State.[4]

II. DISCUSSION

As noted above, this is a big case, with a lot of issues, and a lot at issue for both parties. It is a fundamental principle that PCC is entitled to a fair and reasonable opportunity to obtain that information in the possession of the State that will enable PCC to develop and present its defenses to the State's claims at the adjudicatory hearing in this matter. The interrogatories that PCC seeks leave to serve upon the State are critical to that effort; and PCC will be substantially prejudiced if it is denied the discovery sought thereby.

A. The Thirty Interrogatory Limit Should Not Be Applied Here.

PCC acknowledges that it seeks leave to serve State with a substantial number of interrogatories. However, (although PCC does not understand why the State has chosen to make it so) this is a big case. In addition to the indicators stated above, PCC notes two further relevant statistics: (1) the State has identified 54 witnesses, including ten opinion witnesses who will be

[4] PCC has separated its interrogatories into four sets, each of which addresses only a few basic subjects, in order to make it easier for the State to focus on those particular subjects in responding to the interrogatories.

called to try to make the State's case against PCC, and (2) the State has already directed a total of 729 interrogatories to date (by PCC's count in accordance with Illinois Supreme Rule 213(c) ("Rule 213(c)". Neither of these statistics is surprising to PCC, which recognizes that a great deal of effort is required of the parties in a case like this one both to conduct and to respond to discovery that is necessary "for the purpose of ascertaining the merits of the case and thus promoting either of their settlement or a fair trial." Williams v. A. E. Staley Mfg. and Co., 83 Ill. 2d 559, 566, 416 N.E.2d 252, 256 (1981). Thus, given the basic nature and magnitude of this case, one must recognize that both parties have good reason, indeed an absolute necessity, to direct interrogatories to the other party in excess of the "30 interrogatories as a matter of right" provision of Rule 213(c).

PCC's request to direct its amended third, fourth, fifth and sixth set of interrogatories to State stands on its own merits. However, PCC believes that it is important for the Hearing Officer to understand the background against which PCC directed its original third, fourth, fifth and sixth set of interrogatories to the State without seeking leave to do so. In short, the State asserted its blanket objection to those interrogatories as being in excess of the 30-interrogatory limit; and PCC has withdrawn the interrogatories and has now moved for leave to direct amended sets to the State. Therefore, it should be unnecessary for the Hearing Officer to resolve the issues of the whether the parties had an agreement as to this subject and, if so, what the precise terms of that agreement are in order to rule on PCC's pending request.

Under these circumstances, PCC believes that at the very beginning of this case the parties agreed that the 30-interrogatory limit established by 35 Ill. Adm. Code 101.620(a) and Rule 213(c) would not apply in this case, given the size of the case and the myriad of issues that exist in the case. (Affidavit Of Stephen F. Hedinger Relating To Motion For Leave To Serve Interrogatories, dated July 14, 2003, ¶ 4) PCC further believes that the parties confirmed that

agreement in the course of their attorneys' discussions of the State's most recent set of interrogatories directed to PCC. (Affidavit Of W.C. Blanton Relating To PCC's Motion For Leave To Serve Interrogatories, dated July 14, 2003, ¶ 4)

PCC anticipates the State arguing that the parties never reached any such agreement and that the State will support its contention in this regard by its lead counsel's assertions that it is her practices (1) to memorialize any such agreement in writing, and (2) to agree only to some specific number of interrogatories, rather than leaving the allowable number open, in any such agreement. However, the fact is that the State has directed a total of more than 700 interrogatories to PCC — even though the State at no time has sought leave of this Board to do so. Query: Why the State would have so grossly exceeded the 30-interrogatory limit of Rule 213(c) without obtaining leave of the Board if it considered that limit to be applicable?

PCC also anticipates the State arguing any agreements that it reached with PCC regarding other sets of interrogatories did not include a waiver of the State's right to invoke the "30 interrogatory limit provision" with respect to interrogatories subsequently directed by PCC to the State. Assuming, arguendo, that this is what the State had in mind when it sent hundreds of interrogatories to PCC without seeking leave to do so, that clearly was not the understanding of PCC's attorneys. It also seems an unlikely proposition for a meeting of the minds of the parties, in that it means that PCC simply acquiesced in the State propounding hundreds of interrogatories to it, while at the same time foregoing any reciprocal right to exceed the 30-interrogatory limit.

Even assuming for the sake of argument that no express agreement between the parties was reached in this regard, the State should not be allowed to enforce a 30-interrogatory limit against PCC in the face of the State having exceeded that limit nearly 25 times over as a matter of fundamental equity and fairness. This is clearly a goose and gander situation. The State has

already enjoyed the benefit of its interrogatories; it should now be required to address PCC's interrogatories on their merits.

B. The Interrogatories Seek Information That Is Subject To Discovery.

All of the PCC interrogatories seek information that is relevant to one or more issues that have been raised in this case and/or information that is calculated to lead to such relevant information. Therefore, unless a particular interrogatory is subject to a valid objection on some other grounds, the State has an obligation to provide the information sought. Section 101.616(a).

There are five primary issues that have been raised in this case that are addressed by the PCC interrogatories.[5] The first issue is whether Counts II and III of the State's complaint against PCC in this case have been brought and are being prosecuted by the Attorney General of Illinois ("AG") on his/her own behalf, as the State alleges, or whether instead those Counts actually have been brought and are being prosecuted by the AG on behalf of the IEPA. The second issue is how and to what extent has the quality of the groundwater that is the subject of this matter been adversely affected by COCs generated at PCC's mine that is the subject of this matter. The third issue is whether "water pollution" within the meaning of that term as used in the Illinois Environmental Protection Act ("Act") has occurred in the groundwater that is the subject of this matter and/or whether PCC's coal mining refuse disposal practices at the Mine actually have created a "water pollution hazard" within the meaning of that term as used in the Act as a result of the generation of COCs at the Mine.[6] The fourth issue is closely related to the third issue, i.e., how serious are the alleged exceedances of applicable groundwater quality standards alleged by

[5] These are not all of the issues that have been raised in this case, just the ones relevant to the PCC interrogatories.

[6] Under Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d), it is not merely the act of introducing a pollutant into the waters of Illinois that constitutes water pollution. Rather, as defined in the Act, water pollution is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial,

the State, in that not every substance for which a water quality standard has been promulgated poses the same potential risk of harm to the beneficial uses of groundwater. The fifth (and broadest) issue is what is an appropriate penalty to be imposed upon PCC if the violations of the Act alleged by the State are found to have been proven, which involves consideration of those facts relevant to the factors to be considered under 415 ILCS 5/33(c) and 5/42(h).[7]

Each of the PCC interrogatories has been narrowly drawn to elicit information and/or documents either relevant to one or more of these issues, relating to some specific relevant factual topic.[8] A chart that identifies the issues or topics as to which each of the PCC interrogatories addresses is attached as Appendix A. In summary, the PCC interrogatories are proper as a matter of substance, and PCC doubts that the State will seriously contend otherwise as to many, if any, of them if it is required to satisfy its general obligation to respond to the interrogatories.

C. PCC Will Be Seriously Prejudiced If It Cannot Obtain The Information Sought By Its Interrogatories.

Given the nature and magnitude of the claims asserted against it by the State in this case, there can be no reasonable dispute of the proposition that PCC will be substantially prejudiced if it is not permitted to obtain the information sought by the PCC interrogatories and discoverable under Section 101.616(a). The issues that are addressed by the interrogatories that are the

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industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.55.

[7] Certain of the PCC interrogatories require special comment. First, some of the interrogatories merely seek information from the State that is exactly the same in nature as that sought by certain of the State s interrogatories to PCC; these are merely sending the State s interrogatories back to it. Second, several of the interrogatories are stated so as to seek precisely the same sort of information with respect to each of the five COCs, thereby perhaps giving the impression that responding to those interrogatories involves five times the effort than is really the case.

[8] The number of interrogatories in question here in large measure reflects the fact that many of these interrogatories are narrowly drawn to obtain specific and limited information. That is, rather than asking the State to provide everything it knows about a particular subject or topic via a single broad interrogatory, PCC has created sets of narrowly focused interrogatories designed to elicit only that information possessed by the State with respect to a subject or topic of interest that is relevant to one or more issues in this case or is designed to lead to the discovery of relevant evidence.

subject of this motion are fundamental and significant in this case. Consequently, PCC is entitled to obtain the information possessed by the State that is relevant to those issues and that is likely to lead to other information that is relevant to those issues. If PCC is not granted leave to direct its interrogatories that seek to elicit that information upon the State, its ability to develop and present its defenses to the State's claims in this case will be substantially and significantly compromised.

As To First Issue

The State alone possesses the information that will establish whether Counts II and III of the State's Complaint against PCC in this case indeed have been brought and are being prosecuted by the AG on his/her own behalf, as the State alleges, or whether instead those Counts actually have been brought and are being prosecuted by the AG on behalf of the IEPA. Unless PCC can obtain that information through the discovery process in this case, it will be denied all opportunity to present evidence in support of its contention that the AG and the IEPA have handled certain of the claims asserted by the State against PCC in this case so as to avoid those substantive provisions of Section 31 of the Act that the Board has held to be mandatory, not merely directive, in nature.

As To Second, Third And Fourth Issues

In its Complaint, the State alleges that PCC is responsible for introducing each of the COCs into groundwater at the Mine in such amounts as to cause concentrations at and near the Mine to exceed those that the State alleges constitute the applicable water quality standards for those waters at various locations at various times. The State further alleges in its Complaint both that this constitutes "water pollution" and that it proves that PCC's coal mining refuse disposal practices at the mine, which the State alleges to be the cause of those exceedances, therefore constituted a threat of water pollution. However, the State's Complaint does not contain any

allegations as to why or how those exceedances have, will, or are likely to create a nuisance or render the groundwater in question harmful or detrimental or injurious to public health, safety or welfare, or to any current or potential uses of that water by humans or other species.

PCC obviously cannot defend itself against these State contentions without access to the information possessed by the State upon which the contentions have been made. Accordingly, certain of the interrogatories that are the subject of this motion have been drafted to elicit that information; and PCC will be denied a full and fair opportunity to defend itself against those contentions unless it is allowed to obtain the information sought by those interrogatories.

As To Fifth Issue

The most fundamental test of whether State's contentions regarding the egregiousness of PCC's conduct complained of in this matter, the seriousness of the environmental consequences of that complained-of conduct, the necessity of the remedial action sought by the State with respect to those environmental conditions that have resulted from PCC's complained-of activities, and the severity of the sanctions that State seeks to have imposed upon PCC with respect to its alleged violations of the Illinois environmental laws is how the State has addressed those matters with respect to other parties similarly situated to PCC as to these issues. The State alone possesses the information by which the positions it has asserted in this case can be tested in this regard. This is not, as PCC expects State to contend, information that is relevant only to PCC's now-stricken "equal protection" affirmative defense. Rather, it is information that goes directly to the heart of fundamental issues in this case relating to the seriousness of PCC's alleged offenses and what constitutes an appropriate response by the State to those alleged offenses.

Many of the interrogatories that are the subject of this motion relate to PCC's reasonable contention that the State's characterizations of PCC's conduct as egregious and the consequences

of PCC's complained-of conduct as constituting serious environmental harm are not consistent with the State's responses to prior such conduct on the part of other parties or the similar consequences of that conduct by other parties.[9] Similarly, many of the interrogatories that are subject to this motion relate to PCC's reasonable contention that the State is seeking sanctions against PCC in this case that are grossly disproportionate to the sanctions that the State has sought and that the Board has imposed upon other parties found to have permitted violations that are similar in nature and environmental consequence as those alleged to have been committed by PCC in this case.

There are numerous subjects relevant to PCC's contention of disparate treatment here. Some, but not all, of the issues presented in this regard are as follows:

- whether PCC's coal mining refuse disposal activities at the Mine are any different than the disposal activities carried out by other operators during the same time period;
- whether the regulatory regime applied to PCC's coal mining refuse disposal activities by the State agencies having jurisdiction over those activities differed from those agencies' handling of other coal mine operators during the same time period;
- whether the generation of COCs at the Mine and the associated release of those COCs into groundwater at the Mine differed in nature and/or magnitude from the consequences of other coal mine operators' activities during the same time period;
- whether the responses of the responsible State agencies to groundwater conditions at PCC's Mine differed from those agencies' handling of similar situations at other mines during the same time period;

[9] For example, the State has made it clear in this case that it considers PCC s failure to install highly impermeable liners in the excavations where it disposed of coal mine refuse at the Mine between 1968 and 1993 to constitute a serious transgression of PCC s responsibilities under the applicable Illinois environmental laws. However, the State has acknowledged both that no coal mine operator in Illinois installed such a liner for a coal mine refuse area in Illinois until some time after PCC s coal mine refuse disposal activities at the Mine ceased and that throughout the entire time period when PCC was disposing of coal mine refuse at the Mine, other Illinois coal mine operators were disposing of coal mine refuse at their mines in exactly the same manner as PCC was. Therefore, a number of the interrogatories that are the subject of this motion are designed to elicit information regarding the State s treatment of those coal mine operators other than PCC in order to test the appropriateness of the State s treatment of PCC in this case.

- why did IEPA so radically change its approach to the situation at PCC's Mine in the mid-1990's, compared to the way it was managing the situation at the Mine for many years prior; and how does that compare to the agency's approach to similar situations at other mines during recent years;

- whether IEPA applied different standards in evaluating PCC's request for establishment of a groundwater management zone at the Mine than it has to such requests made by other parties alleged to have caused violations of Part 620 groundwater quality standards;

- whether the State has handled other situations in which concentrations of the COCs in groundwater that serves as a source of public drinking water compares to the State's handling of the groundwater situation at PCC's Mine.

PCC, of course, has limited information regarding other historical coal mining operations in Illinois and even less information regarding historical operations of enterprises than coal mining that have resulted in the introduction of contaminants or pollutants into Illinois waters comparable to that allegedly caused by PCC at the Mine. Similarly, PCC has extremely limited information available to it regarding either the remedial measures that State has in the past required of parties found to be responsible for contamination of Illinois groundwater and what sanctions have been imposed upon such parties. However, the State possesses a wealth of information regarding these matters, and all of that information satisfies the applicable standard for discovery in this case. If PCC cannot obtain that information, it cannot prove the validity of its contentions as to these matters at the adjudicatory hearing in this case. The prejudice to PCC if it is denied leave to direct interrogatories to the State to offer this information is clear.

As To State-Selected Subjects

A number of the interrogatories that are the subject of this motion seek to elicit the same information possessed by the State on certain subjects as that which the State has sought to elicit from PCC via the State's interrogatories to PCC. As to these interrogatories, it is the State who has initially deemed the information sought to be relevant. In particular, certain of these interrogatories seek to elicit the same information possessed by the State with respect to certain

aspects of coal mining operations conducted by parties other than PCC as that which the State has sought from PCC regarding its operations via the State's interrogatories directed to PCC. By the mere direction of those interrogatories to PCC, the State has clearly indicated that it considers PCC's conduct with respect to these matters to raise grave concerns that must be seriously addressed.

By its interrogatories directed to the State with respect to these matters, Peabody is merely seeking to elicit information regarding the issue of whether the State has exhibited comparably grave concern regarding the conduct of other coal mine operators that is indistinguishable from PCC's in this regard. Accordingly, PCC will obviously be prejudiced if it cannot obtain the information possessed by the Sate on these subjects.

III. CONCLUSION

For the reasons stated above, PCC's Motion should be granted and PCC should be granted leave to direct its amended third, fourth, fifth and sixth sets of interrogatories to the State forthwith.

Date: July 14, 2003

Respectfully submitted,

PEABODY COAL COMPANY

By its attorneys

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EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-134
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

PEABODY'S AMENDED THIRD SET OF INTERROGATORIES TO THE STATE

Respondent, Peabody Coal Company ("PCC"), hereby directs the following interrogatories to Complainant, People of the State of Illinois ("State"), to be answered within twenty-eight (28) days of the receipt hereof.

INSTRUCTIONS

1. Unless stated otherwise, provide the information sought by each Interrogatory with respect to the time period January 1, 1965 to present.

2. If your answers to these Interrogatories are supported by (or if an Interrogatory inquires as to the existence of) a record of any type, e.g., documents, photographs, notes, memos, statements, investigative journals, complaints, test results, etc., please attach a copy of the same to your answers identifying which answer each record supports.

3. These Interrogatories shall be deemed continuing so as to require supplemental answers if you obtain further or supplemental information between the time answers to the within Interrogatories are served and the time of hearing. If for any reason you are unable to

answer any Interrogatory in full, such Interrogatory should be answered to the extent possible and the reason for the inability to answer in full should be clearly stated.

4. Verification under oath of all interrogatory responses is required.

5. With respect to information which is withheld or not disclosed as requested pursuant to these interrogatories due to a claim of privilege of non-disclosure, a statement shall be provided by counsel setting forth as to each such withholding or non-disclosure:

a. a brief description of the nature and subject matter of and the reason for withholding or non-disclosure of the information;

b. the statute, rule, decision or other basis which is claimed to give rise to the privilege or any other justification for the non-disclosure or withholding of the requested information.

6. If you exercise your option under Illinois Supreme Court Rule 213(e) to produce certain of your business records as your "answer" to an interrogatory set forth below, documents submitted in response to that request should be produced as they are kept in the usual course of your business or organized and labeled according to the individual categories of the interrogatory to which the documents respond. If you choose the latter method, (i) within each group, the documents should be arranged, to the extent possible, in chronological order, and (ii) if any document is responsive to more than one category, you may provide a single copy indicating the categories to which it is responsive, in lieu of providing multiple copies.

7. It is not PCC's intention by these interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no

objection on those grounds is necessary. However, if you contend that any documents you possess that contain information responsive to these interrogatories as a matter of substance are privileged, then prepare a privilege log containing the following information:

a. the name of the author(s) of the document and the employer of such author(s);

b. the name of each recipient of the document, including all persons to whom a copy was sent and persons with knowledge of the contents of the document, and each recipient's employer;

c. the name of each person who participate in the preparation of the document;

d. the nature or subject matter of the document;

e. the date on which the document was first created and the date the document bears, if different; and

f. the specific basis for the privilege claimed with respect to the document, including but not limited to all facts relied upon in support of the claim or privilege, and the identity of all persons having knowledge of any facts related to the claim of privilege.

8. It is not PCC's intention by these interrogatories to seek information that has previously been provided by the State in its responses to interrogatories previously directed to it by PCC. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no objection on those grounds is necessary. However, if you contend that any information sought by any interrogatory below has been previously provided to PCC in

response to an interrogatory previously directed to the State, identify the interrogatory response by which that information was previously provided to PCC.

DEFINITIONS

As used herein, the words and phrases set out below shall have the meaning or meanings as follows:

1. "Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (1998).

2. "Board" means the Illinois Pollution Control Board.

3. "Attorney General" means the Attorney General of the State of Illinois.

4. "Complaint" means the Third Amended Complaint, filed by the State on or about October 24, 2002.

5. "District" means the Saline Valley Conservancy District.

6. "Document" means each writing and record of every type and description in the possession, control, under contract with or by, or in the custody of the State, including, but not limited to, correspondence, memoranda, stenographic or handwritten notes, reports, manifests, bills of lading, contracts, studies, books, pamphlets, retrievable electronic data, laboratory analyses, picture or voice recordings, and shall mean a copy where the original is not in control of the State. The term "document" means and includes each and every medium upon which information can be printed, or reproduced in any manner by mechanical means, by hand or otherwise, that is or has been in your possession, custody or control or which will lead to the discovery of the whereabouts of a responsive document, including logs, e-mail records, publications, photographs, recordings of every kind or records, transcripts, cover sheets, transmittal records of meetings, conferences, telephone or other communications, diagrams,

charts, computer printouts, pictures, magazines, texts, video or audio tapes, drawings, summaries of telephone conversations, summaries or reports of investigations or negotiations, and sketches, every copy of such writing or record where the original is not in your possession, custody or control, and every copy of such writing or record where such copy contains any commentary or notations whatsoever that do not appear in the original, and drafts of any of the foregoing.

7. "Enforcement Action" means any process initiated either by IEPA or the Attorney General against any person in which that person was alleged to have violated any provision of the Act or the GPA and in which IEPA or the Attorney General at any time sought the imposition against that person of some sanction authorized by the Act or the GPA.

8. "Identification" or "identify" means:

a. As to an individual, stating his or her:

i. Full and customarily used name or names;

ii. Present business or residential address; and

iii. Every title, office, position, or other relationship held with the State, both currently and during the relevant time period.

b. As to any "person" other than an individual, stating:

i. Its legal name and any other names used by it;

ii. The form or manner of its organization (e.g., partnership, corporation, etc.); and

iii. The State of its incorporation (if it is incorporated) and the address of its principal place of business and identity of its Registered Agent.

c. As to a document, stating:

i. the date of its creation;

ii. its author or signatory;

iii. its addressee and any other recipient;

iv. its type or nature (e.g., letter, memorandum, etc.), including its subject matter (which shall be stated with particularity);

v. the identity and business or home address of the custodian; and

vi. the present location of the document.

9. "IDNR" means the Illinois Department of Natural Resources and/or its predecessor agency.

10. "GPA" means the Illinois Groundwater Protection Act, 415 ILCS 55/1 et seq.

11. "IEPA" means the Illinois Environmental Protection Agency and/or its predecessor agency.

12. "In the possession of" means in the physical possession of, or under or subject to the control of or available to as to matter of right, the person or body named or any person or body subject to the control or direction of such person or body in regard to the record or item named.

13. "NOV I" means Notice of Violation M-1997-00010 issued to PCC by IEPA on or about January 28, 1997.

14. "NOV II" means Notice of Violation M-1997-00133 issued to PCC by IEPA on or about December 23, 1997.

15. "OMM" means the Office of Mines and Minerals of the IDNR and/or its predecessor agency.

16. "PCC" means Peabody Coal Company, its divisions, subsidiaries, related companies or corporations, predecessors, successors, and all present and former officers, directors, agents, attorneys, employees and all other persons acting or purporting to act on behalf of them.

17. "Predecessor agency" means any agency or subdivision of the State of Illinois that at some point in time prior to the creation of an existing State Agency had substantially the same responsibilities as the existing State Agency, specifically including responsibility for the matter that is the subject of a request set forth below.

18. "Related to" or "relating to" means directly or indirectly, mentioning or describing, consisting of, pertaining to, being connected with, reflecting upon, or having any logical or factual connection with a stated matter.

19. "Relied upon" means being or having been depended upon or referred to in relation to the matter at issue.

20. "State Agency" means any state agency as that term is defined in 30 ILCS 5/1-7.

21. "The State" means Complainant, People of the State of Illinois, in the context of references to parties to this case. In all other contexts, "the State" has the same meaning as the word "you" as defined immediately below.

22. "WQS" means water quality standard(s).

23. "You" means the State of Illinois, its agencies, and their respective officers, agents, employees, representatives, or any other person or persons acting for, or purportedly acting on behalf of or in concert with them, individually and collectively; and "your" means the possessive of "you."

CONSTRUCTION

1. In construing these requests:

   a. The singular shall include the plural and the plural shall include the singular;

b. A masculine, feminine or neutral pronoun shall not exclude the other genders;

c. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as "and/or" or as otherwise necessary in order to bring within the scope of the Interrogatory all responses which might otherwise be construed to be outside its scope.

2. It is not PCC's intention by these Interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the Interrogatories below should be construed consistent with that intention, even if an Interrogatory by its terms could be construed to seek to elicit such information, so that no objection on that basis is required.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, occupation, title and business address of the person or persons providing information in response to these Interrogatories, including all individuals responding on behalf of any person who is not an individual, and indicate which person or person answered each Interrogatory.

RESPONSE:

INTERROGATORY NO. 2: State the name, address and phone number of each witness who will testify on behalf of the State at the hearing of this matter and state the subject matter of each witness' testimony.

RESPONSE:

INTERROGATORY NO. :3 As to any controlled expert witness who will offer opinion testimony on behalf of the State at the hearing of this matter:

a. Describe in detail the subject matter on which the witness is expected to testify;

b. Provide and describe in detail the conclusions and/or opinions of the witness and the basis therefore, including reports of the witness, if any;

c. Describe in detail the qualifications of the witness, and identify whether a curriculum vitae and/or resume is available for the witness; and

d. Identify all documents and other things that provide the basis for the witness's opinions, or on which the witness relied in developing his or her opinions.

RESPONSE:

INTERROGATORY NO. 4 As to any independent expert witness who will offer opinion testimony on behalf of the State at the hearing of this matter:

a. Describe in detail the subject matter on which the witness is expected to testify;

b. Provide and describe in detail the conclusions and/or opinions of the witness and the basis therefore, including reports of the witness, if any;

c. Describe in detail the qualifications of the witness, and identify whether a curriculum vitae and/or resume is available for the witness; and

d. Identify all documents and other things that provide the basis for the witness's opinions, or on which the witness relied in developing his or her opinions.

RESPONSE:

INTERROGATORY NO. 5 To the extent you have not already done so, state the names, address and phone numbers of all persons known to the State, other than the individuals identified in response to the three preceding Interrogatories, who are likely to have discoverable information relevant to matters at issue in this lawsuit and to all allegations contained within the Complaint, and include with each a statement of the subject matter of such knowledge.

RESPONSE:

INTERROGATORY NO. 6 Describe with particularity the relationship between the State and Thomas A. Prickett with respect to the State's investigation of the matters that are the subject of this proceeding, the State's analysis of the groundwater system near the Mine, the State's determination and evaluation of water quality in the groundwater near the Mine, the State's prosecution of this action, and any other aspect of this matter; and identify every document related in any way to the State's relationship with Mr. Prickett in this regard, specifically including all reports and other documents prepared by Mr. Prickett on behalf of the District, the State, or any other person that address in any way any aspect of the matters that are the subject of the Complaint or otherwise relating in any way to this matter.

RESPONSE:

INTERROGATORY NO. 7 Identify all persons acting on behalf of IEPA and all persons acting on behalf of the Attorney General in connection with IEPA's referral of NOV I to the Attorney General.

RESPONSE:

INTERROGATORY NO. 8 Identify all persons acting on behalf of IEPA and all persons acting on behalf of the Attorney General in connection with IEPA's referral of NOV II to the Attorney General.

RESPONSE:

INTERROGATORY NO. 9 Identify all persons acting on behalf of IEPA and all persons acting on behalf of the Attorney General in connection with IEPA's provision of documents to the Attorney General relating to the allegations set forth in Count II of the Complaint.

RESPONSE:

INTERROGATORY NO. 10 Identify all persons acting on behalf of IEPA and all persons acting on behalf of the Attorney General in connection with IEPA's provision of documents to the Attorney General relating to the allegations set forth in Count III of the Complaint.

RESPONSE:

INTERROGATORY NO. 11 Identify all persons acting on behalf of IEPA and all persons acting on behalf of the Attorney General in connection with IEPA's provision of other documents to the Attorney General relating to the matters that are the subject of the Complaint or otherwise relating to this matter.

RESPONSE:

INTERROGATORY NO. 12 Identify all persons acting on behalf of the Attorney General and all persons acting on behalf of IEPA in connection with the determination by the State to assert Count II of the Complaint.

RESPONSE:

INTERROGATORY NO. 13 Identify all persons acting on behalf of the Attorney General and all persons acting on behalf of IEPA in connection with the determination by the State to assert Count III of the Complaint.

RESPONSE:

Date: July 14, 2003

PEABODY COAL COMPANY

By its attorneys

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EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-134
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
Respondent.	)	

PEABODY'S AMENDED FOURTH SET OF INTERROGATORIES TO THE STATE

Respondent, Peabody Coal Company, through its undersigned attorneys, hereby directs the following interrogatories to Complainant, People of the State of Illinois, to be answered within twenty-eight (28) days of the receipt hereof.

INSTRUCTIONS

1. Unless stated otherwise, provide the information sought by each Interrogatory with respect to the time period January 1, 1965 to present.

2. If your answers to these Interrogatories are supported by (or if an Interrogatory inquires as to the existence of) a record of any type, e.g., documents, photographs, notes, memos, statements, investigative journals, complaints, test results, etc., please attach a copy of the same to your answers identifying which answer each record supports.

3. These Interrogatories shall be deemed continuing so as to require supplemental answers if you obtain further or supplemental information between the time answers to the within Interrogatories are served and the time of hearing. If for any reason you are unable to

answer any Interrogatory in full, such Interrogatory should be answered to the extent possible and the reason for the inability to answer in full should be clearly stated.

4. Verification under oath of all interrogatory responses is required.

5. With respect to information which is withheld or not disclosed as requested pursuant to these interrogatories due to a claim of privilege of non-disclosure, a statement shall be provided by counsel setting forth as to each such withholding or non-disclosure:

a. a brief description of the nature and subject matter of and the reason for withholding or non-disclosure of the information;

b. the statute, rule, decision or other basis which is claimed to give rise to the privilege or any other justification for the non-disclosure or withholding of the requested information.

6. If you exercise your option under Illinois Supreme Court Rule 213(e) to produce certain of your business records as your "answer" to an interrogatory set forth below, documents submitted in response to that request should be produced as they are kept in the usual course of your business or organized and labeled according to the individual categories of the interrogatory to which the documents respond. If you choose the latter method, (i) within each group, the documents should be arranged, to the extent possible, in chronological order, and (ii) if any document is responsive to more than one category, you may provide a single copy indicating the categories to which it is responsive, in lieu of providing multiple copies.

7. It is not PCC's intention by these interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no

objection on those grounds is necessary. However, if you contend that any documents you possess that contain information responsive to these interrogatories as a matter of substance are privileged, then prepare a privilege log containing the following information:

a. the name of the author(s) of the document and the employer of such author(s);

b. the name of each recipient of the document, including all persons to whom a copy was sent and persons with knowledge of the contents of the document, and each recipient's employer;

c. the name of each person who participate in the preparation of the document;

d. the nature or subject matter of the document;

e. the date on which the document was first created and the date the document bears, if different; and

f. the specific basis for the privilege claimed with respect to the document, including but not limited to all facts relied upon in support of the claim or privilege, and the identity of all persons having knowledge of any facts related to the claim of privilege.

8. It is not PCC's intention by these interrogatories to seek information that has previously been provided by the State in its responses to interrogatories previously directed to it by PCC. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no objection on those grounds is necessary. However, if you contend that any information sought by any interrogatory below has been previously provided to PCC in

response to an interrogatory previously directed to the State, identify the interrogatory response by which that information was previously provided to PCC.

DEFINITIONS

As used herein, the words and phrases set out below shall have the meaning or meanings as follows:

1. "Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (1998).

2. "Board" means the Illinois Pollution Control Board.

3. "Chemical of concern" means chloride, iron, manganese, sulfate, or TDS.

4. "Coal mining" or "Mining of coal" means the excavation and extraction of natural underground coal deposits by the use of any mechanical operation.

5. "Coal mining refuse" means gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and other unmerchantable solid or slurry material intended to be discarded which is connected with the cleaning and preparation of mined materials at a preparation plant or washery.

6. "District" means the Saline Valley Conservancy District.

7. "District's Production Wells" means those wells designated by the District as Well No. 1, Well No. 2, Well No. 3, Well No. 4, Well No. 5, and Well No. 6, located in Gallatin County, Illinois by which the District extracts or formerly extracted groundwater which is processed at its treatment facility for distribution to its customers.

8. "Document" means each writing and record of every type and description in the possession, control, under contract with or by, or in the custody of the State, including, but not limited to, correspondence, memoranda, stenographic or handwritten notes, reports, manifests,

bills of lading, contracts, studies, books, pamphlets, retrievable electronic data, laboratory analyses, picture or voice recordings, and shall mean a copy where the original is not in control of the State. The term "document" means and includes each and every medium upon which information can be printed, or reproduced in any manner by mechanical means, by hand or otherwise, that is or has been in your possession, custody or control or which will lead to the discovery of the whereabouts of a responsive document, including logs, e-mail records, publications, photographs, recordings of every kind or records, transcripts, cover sheets, transmittal records of meetings, conferences, telephone or other communications, diagrams, charts, computer printouts, pictures, magazines, texts, video or audio tapes, drawings, summaries of telephone conversations, summaries or reports of investigations or negotiations, and sketches, every copy of such writing or record where the original is not in your possession, custody or control, and every copy of such writing or record where such copy contains any commentary or notations whatsoever that do not appear in the original, and drafts of any of the foregoing.

9. "Finished water" means water distributed to a public water supply operator's customer.

10. "GPA" means the Illinois Groundwater Protection Act, 415 ILCS 55/1 et seq.

11. "Groundwater" means any groundwater as that term is defined in 415 ILCS 55/3(g).

12. "Identification" or "identify" means:

a. As to an individual, stating his or her:

i. Full and customarily used name or names;

ii. Present business or residential address; and

iii. Every title, office, position, or other relationship held with the State, both currently and during the relevant time period.

b. As to any "person" other than an individual, stating:

i. Its legal name and any other names used by it;

ii. The form or manner of its organization (e.g., partnership, corporation, etc.); and

iii. The State of its incorporation (if it is incorporated) and the address of its principal place of business and identity of its Registered Agent.

c. As to a document, stating:

i. the date of its creation;

ii. its author or signatory;

iii. its addressee and any other recipient;

iv. its type or nature (e.g., letter, memorandum, etc.), including its subject matter (which shall be stated with particularity);

v. the identity and business or home address of the custodian; and

vi. the present location of the document.

13. "IDNR" means the Illinois Department of Natural Resources and/or its predecessor agency.

14. "IEPA" means the Illinois Environmental Protection Agency and/or its predecessor agency.

15. "In the possession of" means in the physical possession of, or under or subject to the control of or available to as to matter of right, the person or body named or any person or body subject to the control or direction of such person or body in regard to the record or item named.

16. "Mine" means PCC's Eagle No. 2 Mine, an underground coal mine, including the surface area thereof, located approximately one mile northwest of Shawneetown, Illinois in Gallatin County, Illinois.

17. "Near the Mine" means two miles or less in distance from any property boundary of the Mine.

18. "OMM" means the Office of Mines and Minerals of the IDNR and/or its predecessor agency.

19. "Part 620 Standards" means the WQS established by 35 Ill. Adm. Code, Subtitle C, Part 620, Subpart D.

20. "PCC" means Peabody Coal Company, its divisions, subsidiaries, related companies or corporations, predecessors, successors, and all present and former officers, directors, agents, attorneys, employees and all other persons acting or purporting to act on behalf of them.

21. "Person" means any person as that term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (1998).

22. "Predecessor agency" means any agency or subdivision of the State of Illinois that at some point in time prior to the creation of an existing State Agency had substantially the same responsibilities as the existing State Agency, specifically including responsibility for the matter that is the subject of a request set forth below.

23. "Raw water" means groundwater extracted by the District's Production Wells prior to any treatment.

24. "Refuse disposal area" means any land used for dumping, storage or disposal of coal refuse which is intended to serve as permanent disposal of such material.

25. "Related to" or "relating to" means directly or indirectly, mentioning or describing, consisting of, pertaining to, being connected with, reflecting upon, or having any logical or factual connection with a stated matter.

26. "Relied upon" means being or having been depended upon or referred to in relation to the matter at issue.

27. "State Agency" means any state agency as that term is defined in 30 ILCS 5/1-7.

28. "TDS" means total dissolved solids.

29. "The State" means Complainant, People of the State of Illinois, in the context of references to parties to this case. In all other context, "The State" has the same meaning as the word "you" as defined immediately below.

30. "Treatment Facility" means the District's facility located in Shawneetown, Illinois at which water obtained by the operation of the District's production wells is treated prior to its distribution to the District's customers.

31. "WQS" means water quality standard(s).

32. "You" means the State of Illinois, its agencies, and their respective officers, agents, employees, representatives, or any other person or persons acting for, or purportedly acting on behalf of or in concert with them, individually and collectively; and "your" means the possessive of "you."

CONSTRUCTION

1. In construing these requests:

   a. The singular shall include the plural and the plural shall include the singular;

   b. A masculine, feminine or neutral pronoun shall not exclude the other genders;

   c. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as "and/or" or as otherwise necessary in order to bring

within the scope of the Interrogatory all responses which might otherwise be construed to be outside its scope.

2. It is not PCC's intention by these Interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the Interrogatories below should be construed consistent with that intention, even if an Interrogatory by its terms could be construed to seek to elicit such information, so that no objection on that basis is required.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, occupation, title and business address of the person or persons providing information in response to these interrogatories, including all individuals responding on behalf of any person who is not an individual, and indicate which person or person answered each interrogatory.

RESPONSE:

INTERROGATORY NO. 2 To the extent you have not already done so, state with specificity all possible adverse health effects caused by the ingestion of drinking water containing sulfates, and for each such possible adverse health effect stated, further state the concentrations of sulfates in drinking water at which the possible adverse health effect may occur, and identify each document and other source of information upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 3 To the extent you have not already done so, state with specificity all possible adverse health effects caused by the ingestion of drinking water containing chlorides, and for each such possible adverse health effect stated, further state the concentrations of chlorides in drinking water at which the possible adverse health effect may occur, and identify each document and other source of information upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 4 To the extent you have not already done so, state with specificity all possible adverse health effects caused by the ingestion of drinking water containing TDS, and for each such possible adverse health effect stated, further state the concentrations of TDS in drinking water at which the possible adverse health effect may occur, and identify each document and other source of information upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 5 To the extent you have not already done so, state with specificity all possible adverse health effects caused by the ingestion of drinking water containing iron, and for each such possible adverse health effect stated, further state the concentrations of iron in drinking water at which the possible adverse health effect may occur, and identify each document and other source of information upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 6 To the extent you have not already done so, state with specificity all possible adverse health effects caused by the ingestion of drinking water containing manganese, and for each such possible adverse health effect stated, further state the concentrations of manganese in drinking water at which the possible adverse health effect may occur, and identify each document and other source of information upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 7 Identify all publications not previously produced issued by a State Agency and all other documents not previously produced either created by or otherwise in the possession of a State Agency that contain summaries of water quality data pertaining to groundwater that constitutes a public water supply source in Illinois.

RESPONSE:

INTERROGATORY NO. 8 Identify all other publications not previously produced issued by a State Agency and all other documents not previously produced either created by or in the possession of a State Agency that contain summaries of Illinois groundwater quality data.

RESPONSE:

INTERROGATORY NO. 9 Has the State made any effort to determine the direction and/or rate of groundwater flow near the Mine? If so, state each determination, identify each person involved in the process of each such determination being made, and state the bases for each such determination. To the extent you have not already done so, identify the owner, location, and date of installation of each well formerly or currently in existence near the Mine. For each such well, state the purpose of the well and state all water quality data obtained by analyses of samples of groundwater obtained from the well.

RESPONSE:

INTERROGATORY NO. 10 State the background level of sulfates in groundwater near and upgradient from the Mine near the Mine and state with specificity the basis for your answer.

RESPONSE:

INTERROGATORY NO. 11 State the background level of chlorides in groundwater near and upgradient from the Mine near the Mine and state with specificity the basis for your answer.

RESPONSE:

INTERROGATORY NO. 12 State the background level of TDS in groundwater near and upgradient from the Mine near the Mine and state with specificity the basis for your answer.

RESPONSE:

INTERROGATORY NO. 13 State the background level of iron in groundwater near and upgradient from the Mine near the Mine and state with specificity the basis for your answer.

RESPONSE:

INTERROGATORY NO. 14 State the background level of manganese in groundwater from the Mine near and upgradient from the Mine near the Mine and state with specificity the basis for your answer.

RESPONSE:

INTERROGATORY NO. 15 What are the uses and potential uses of groundwater located at and near the Mine?

RESPONSE:

INTERROGATORY NO. 16 For each use and potential use of the groundwater located at and near the Mine identified in your answer to Interrogatory 15, state whether that use has been precluded, adversely affected, or threatened to be adversely affected by sulfates

generated within a coal mining refuse disposal area at the Mine. If your answer to the this Interrogatory is affirmative, state specifically all facts upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 17 For each use and potential use of the groundwater located at and near the Mine identified in your answer to Interrogatory 15, state whether that use has been precluded, adversely affected, or threatened to be adversely affected by chlorides generated within a coal mining refuse disposal area at the Mine. If your answer to the this Interrogatory is affirmative, state specifically all facts upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 18 For each use and potential use of the groundwater located at and near the Mine identified in your answer to Interrogatory 15, state whether that use has been precluded, adversely affected, or threatened to be adversely affected by TDS generated within a coal mining refuse disposal area at the Mine. If your answer to the this Interrogatory is affirmative, state specifically all facts upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 19 For each use and potential use of the groundwater located at and near the Mine identified in your answer to Interrogatory 15, state whether that use has been precluded, adversely affected, or threatened to be adversely affected by iron generated

within a coal mining refuse disposal area at the Mine. If your answer to the this Interrogatory is affirmative, state specifically all facts upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 20 For each use and potential use of the groundwater located at and near the Mine identified in your answer to Interrogatory 15, state whether that use has been precluded, adversely affected, or threatened to be adversely affected by manganese generated within a coal mining refuse disposal area at the Mine. If your answer to the this Interrogatory is affirmative, state specifically all facts upon which your answer is based.

RESPONSE:

INTERROGATORY NO. 21 Identify each document not previously produced that contains information regarding the possible adverse health effects of sulfates relied upon by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 22 Identify each other document not previously produced that contains information regarding the possible adverse health effects of sulfates relied upon by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 23 Identify each document not previously produced that contains information regarding the possible adverse health effects of chlorides considered by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 24 Identify each document not previously produced that contains information regarding the possible adverse health effects of chlorides relied upon by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 25 Identify each document not previously produced that contains information regarding the possible adverse health effects of TDS considered by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 26 Identify each document not previously produced that contains information regarding the possible adverse health effects of TDS considered by the Board in connection with its promulgation of the Part 620 Standards.

RESPONSE:

INTERROGATORY NO. 27 Identify each document not previously produced relied upon by the Board in evaluating the technical feasibility and economic reasonableness of coal mine operators complying with the Part 620 Standards in light of existing physical conditions at and near existing coal mine refuse disposal areas.

RESPONSE:

INTERROGATORY NO. 28 Has the District at any time treated raw water obtained from its production wells by any method that results in an increased concentration of sulfates in the District's finished water as compared to that existing in the pre-treated raw water? If so, describe each such method and state when each such method was employed by the District and describe any action taken by the State to monitor, prohibit, or limit the District's treatment method in this regard.

RESPONSE:

Date: July 14, 2003

PEABODY COAL COMPANY

By its attorneys

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EXHIBIT C

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-134
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

PEABODY'S AMENDED FIFTH SET OF INTERROGATORIES TO THE STATE

Respondent, Peabody Coal Company, through its undersigned attorneys, hereby directs the following interrogatories to Complainant, People of the State of Illinois, to be answered within twenty-eight (28) days of the receipt hereof.

INSTRUCTIONS

1. Unless stated otherwise, provide the information sought by each Interrogatory with respect to the time period January 1, 1965 to present.

2. If your answers to these Interrogatories are supported by (or if an Interrogatory inquires as to the existence of) a record of any type, e.g., documents, photographs, notes, memos, statements, investigative journals, complaints, test results, etc., please attach a copy of the same to your answers identifying which answer each record supports.

3. These Interrogatories shall be deemed continuing so as to require supplemental answers if you obtain further or supplemental information between the time answers to the within Interrogatories are served and the time of hearing. If for any reason you are unable to

answer any Interrogatory in full, such Interrogatory should be answered to the extent possible and the reason for the inability to answer in full should be clearly stated.

4. Verification under oath of all interrogatory responses is required.

5. With respect to information which is withheld or not disclosed as requested pursuant to these interrogatories due to a claim of privilege of non-disclosure, a statement shall be provided by counsel setting forth as to each such withholding or non-disclosure:

a. a brief description of the nature and subject matter of and the reason for withholding or non-disclosure of the information;

b. the statute, rule, decision or other basis which is claimed to give rise to the privilege or any other justification for the non-disclosure or withholding of the requested information.

6. If you exercise your option under Illinois Supreme Court Rule 213(e) to produce certain of your business records as your "answer" to an interrogatory set forth below, documents submitted in response to that request should be produced as they are kept in the usual course of your business or organized and labeled according to the individual categories of the interrogatory to which the documents respond. If you choose the latter method, (i) within each group, the documents should be arranged, to the extent possible, in chronological order, and (ii) if any document is responsive to more than one category, you may provide a single copy indicating the categories to which it is responsive, in lieu of providing multiple copies.

7. It is not PCC's intention by these interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no

objection on those grounds is necessary. However, if you contend that any documents you possess that contain information responsive to these interrogatories as a matter of substance are privileged, then prepare a privilege log containing the following information:

a. the name of the author(s) of the document and the employer of such author(s);

b. the name of each recipient of the document, including all persons to whom a copy was sent and persons with knowledge of the contents of the document, and each recipient's employer;

c. the name of each person who participate in the preparation of the document;

d. the nature or subject matter of the document;

e. the date on which the document was first created and the date the document bears, if different; and

f. the specific basis for the privilege claimed with respect to the document, including but not limited to all facts relied upon in support of the claim or privilege, and the identity of all persons having knowledge of any facts related to the claim of privilege.

8. It is not PCC's intention by these interrogatories to seek information that has previously been provided by the State in its responses to interrogatories previously directed to it by PCC. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no objection on those grounds is necessary. However, if you contend that any information sought by any interrogatory below has been previously provided to PCC in

response to an interrogatory previously directed to the State, identify the interrogatory response by which that information was previously provided to PCC.

DEFINITIONS

As used herein, the words and phrases set out below shall have the meaning or meanings as follows:

1. "Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (1998).

2. "Board" means the Illinois Pollution Control Board.

3. "Another Mine" means a coal mine in Illinois other than the Mine.

4. "Another Operator" means an operator of a coal mine in Illinois other than PCC.

5. "Chapter 3" means Chapter 3: Water Pollution Control Rules and Regulations of the Illinois Pollution Control Board, both as originally promulgated on March 7, 1972, and as amended from time to time thereafter through June 21, 1982.

6. "Coal mining" or "Mining of coal" means the excavation and extraction of natural underground coal deposits by the use of any mechanical operation.

7. "Coal mining refuse" means gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and other unmerchantable solid or slurry material intended to be discarded which is connected with the cleaning and preparation of mined materials at a preparation plant or washery.

8. "Complaint" means the Third Amended Complaint, filed by the State on or about October 24, 2002.

9. "Corrective Action Plan" means any corrective action plan or process proposed to or considered by IEPA pursuant to 35 Ill. Adm. Code § 620.250.

10. "Document" means each writing and record of every type and description in the possession, control, under contract with or by, or in the custody of the State, including, but not limited to, correspondence, memoranda, stenographic or handwritten notes, reports, manifests, bills of lading, contracts, studies, books, pamphlets, retrievable electronic data, laboratory analyses, picture or voice recordings, and shall mean a copy where the original is not in control of the State. The term "document" means and includes each and every medium upon which information can be printed, or reproduced in any manner by mechanical means, by hand or otherwise, that is or has been in your possession, custody or control or which will lead to the discovery of the whereabouts of a responsive document, including logs, e-mail records, publications, photographs, recordings of every kind or records, transcripts, cover sheets, transmittal records of meetings, conferences, telephone or other communications, diagrams, charts, computer printouts, pictures, magazines, texts, video or audio tapes, drawings, summaries of telephone conversations, summaries or reports of investigations or negotiations, and sketches, every copy of such writing or record where the original is not in your possession, custody or control, and every copy of such writing or record where such copy contains any commentary or notations whatsoever that do not appear in the original, and drafts of any of the foregoing.

11. "Enforcement Action" means any process initiated either by IEPA or the Attorney General against any person in which that person was alleged to have violated any provision of the Act or the GPA and in which IEPA or the Attorney General at any time sought the imposition against that person of some sanction authorized by the Act or the GPA.

12. "GMZ" means any groundwater management zone as that term is used in 35 Ill. Adm. Code § 620.250 and/or defined in 35 Ill. Adm. Code § 740.120.

13. "Groundwater" means any groundwater as that term is defined in 415 ILCS 55/3(g).

14. "Identification" or "identify" means:

a. As to an individual, stating his or her:

i. Full and customarily used name or names;

ii. Present business or residential address; and

iii. Every title, office, position, or other relationship held with the State, both currently and during the relevant time period.

b. As to any "person" other than an individual, stating:

i. Its legal name and any other names used by it;

ii. The form or manner of its organization (e.g., partnership, corporation, etc.); and

iii. The State of its incorporation (if it is incorporated) and the address of its principal place of business and identity of its Registered Agent.

c. As to a document, stating:

i. the date of its creation;

ii. its author or signatory;

iii. its addressee and any other recipient;

iv. its type or nature (e.g., letter, memorandum, etc.), including its subject matter (which shall be stated with particularity);

v. the identity and business or home address of the custodian; and

vi. the present location of the document.

15. "IDNR" means the Illinois Department of Natural Resources and/or its predecessor agency.

16. "IEPA" means the Illinois Environmental Protection Agency and/or its predecessor agency.

17. "In the possession of" means in the physical possession of, or under or subject to the control of or available to as to matter of right, the person or body named or any person or body subject to the control or direction of such person or body in regard to the record or item named.

18. "Mine" means PCC's Eagle No. 2 Mine, an underground coal mine, including the surface area thereof, located approximately one mile northwest of Shawneetown, Illinois in Gallatin County, Illinois.

19. "OMM" means the Office of Mines and Minerals of the IDNR and/or its predecessor agency.

20. "Part 302 Standards" means the WQS established by 35 Ill. Adm. Code, Subtitle C, Part 302, Subpart B.

21. "Part 620 Standards" means the WQS established by 35 Ill. Adm. Code, Subtitle C, Part 620, Subpart D.

22. "PCC" means Peabody Coal Company, its divisions, subsidiaries, related companies or corporations, predecessors, successors, and all present and former officers, directors, agents, attorneys, employees and all other persons acting or purporting to act on behalf of them.

23. "Person" means any person as that term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (1998).

24. "Predecessor agency" means any agency or subdivision of the State of Illinois that at some point in time prior to the creation of an existing State Agency had substantially the same responsibilities as the existing State Agency, specifically including responsibility for the matter that is the subject of a request set forth below.

25. "Refuse disposal area" means any land used for dumping, storage or disposal of coal refuse which is intended to serve as permanent disposal of such material.

26. "Related to" or "relating to" means directly or indirectly, mentioning or describing, consisting of, pertaining to, being connected with, reflecting upon, or having any logical or factual connection with a stated matter.

27. "Relied upon" means being or having been depended upon or referred to in relation to the matter at issue.

28. "Remedial Action Plan" means any Remedial Action Plan within the meaning of that term as used in 35 Ill. Adm. Code § 740.450.

29. "Rule 203(f)" means Rule 203(f) of Chapter 3.

30. "Rule 204(b)" means Rule 204(b) of Chapter 3.

31. "State Agency" means any state agency as that term is defined in 30 ILCS 5/1-7.

32. "TDS" means total dissolved solids.

33. "The State" means Complainant, People of the State of Illinois, in the context of references to parties to this case. In all other context, "The State" has the same meaning as the word "you" as defined immediately below.

34. "WQS" means water quality standard(s).

35. "You" means the State of Illinois, its agencies, and their respective officers, agents, employees, representatives, or any other person or persons acting for, or purportedly acting on behalf of or in concert with them, individually and collectively; and "your" means the possessive of "you."

CONSTRUCTION

1. In construing these requests:

a. The singular shall include the plural and the plural shall include the singular;

b. A masculine, feminine or neutral pronoun shall not exclude the other genders;

c. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as "and/or" or as otherwise necessary in order to bring within the scope of the Interrogatory all responses which might otherwise be construed to be outside its scope.

2. It is not PCC's intention by these Interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the Interrogatories below should be construed consistent with that intention, even if an Interrogatory by its terms could be construed to seek to elicit such information, so that no objection on that basis is required.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, occupation, title and business address of the person or persons providing information in response to these interrogatories, including all individuals responding on behalf of any person who is not an individual, and indicate which person or person answered each interrogatory.

RESPONSE:

INTERROGATORY NO. 2: For each alleged exceedance of a Part 620 Standard allegedly caused by operations conducted at Another Mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged

exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 3: For each alleged exceedance of a Part 620 Standard allegedly caused by operations conducted at a facility other than a coal mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 4: For each alleged exceedance of a Part 302 Standard allegedly caused by operations conducted at Another Mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 5: For each alleged exceedance of a Part 302 Standard allegedly caused by operations conducted at a facility other than a coal mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the

State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 6: For each alleged exceedance of Rule 203(f) or Rule 204(b) Standard allegedly caused by operations conducted at Another Mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 7: For each alleged exceedance of Rule 203(f) or Rule 204(b) Standard allegedly caused by operations conducted at a facility other than a coal mine, describe the alleged exceedance by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the

exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 8 For each alleged violation of Section 12(a) of the Act allegedly caused by operations conducted at Another Mine, describe the alleged violation by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 9: For each alleged violation of Section 12(a) of the Act allegedly caused by operations conducted at a facility other than a coal mine, describe the alleged violation by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 10: For each alleged violation of Section 12(d) of the Act allegedly caused by operations conducted at Another Mine, describe the alleged violation by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action.

RESPONSE:

INTERROGATORY NO. 11: For each alleged violation of Section 12(d) of the Act allegedly caused by operations conducted at a facility other than a coal mine, describe the alleged violation by providing information comparable to that set forth in the Complaint with respect to the alleged exceedances that are the subject of this proceeding and describe with specificity all Enforcement Action taken by the State with respect to the exceedance, including the nature, terms, and conditions of any final disposition of the Enforcement Action. Specifically, state for each such Enforcement Action whether the alleged violator either agreed to or was ordered to pay a civil penalty and, if so, the amount of such penalty; and for each such Enforcement Action specifically state whether the alleged violator agreed to or was ordered to pay some or all of the State's attorneys' fees incurred in connection with the Enforcement Action and, if so, the amount of such fees to be paid by the violator.

RESPONSE:

INTERROGATORY NO. 12: Identify each GMZ established under 35 Ill. Adm. Code § 620.250 (a) and (b) by stating for each such GMZ the identity of the owner and/or operator of the site at which the GMZ is located, the circumstances that exist at the site on which the establishment of a GMZ was based, the date upon which the State approved the establishment of a GMZ, a description of all information required by the State as a condition of establishing the GMZ, and a description of the GMZ.

RESPONSE:

INTERROGATORY NO. 13: Identify each GMZ established under 35 Ill. Adm. Code § 740.530 by stating for each such GMZ the identity of the owner and/or operator of the site at which the GMZ is located, the circumstances that exist at the site on which the establishment of a GMZ was based, the date upon which the State approved the establishment of a GMZ, a description of all information required by the State as a condition of establishing the GMZ, and a description of the GMZ.

RESPONSE:

INTERROGATORY NO. 14: Has OMM issued any operating permit to Another Operator that authorizes that operator to dispose of coal mining refuse by placing such material on the ground at Another Mine? If so, identify each such other operator and the permit that authorizes such disposal.

RESPONSE:

INTERROGATORY NO. 15: Has OMM issued any operating permit to Another Operator that authorizes that operator to dispose of coal mining refuse by placing such material in excavations beneath the surface of the ground at Another Mine? If so, identify each such other operator and the permit that authorizes such disposal.

RESPONSE:

INTERROGATORY NO. 16: Identify each GMZ proposed but not established under 35 Ill. Adm. Code § 620.250 (a) and (b) by stating for each such proposed GMZ the identity of the owner and/or operator of the site at which the proposed GMZ is located, the circumstances that exist at that site, the date upon which the State denied the establishment of a GMZ, a description of all information required by the State as a condition of establishing a GMZ, and a description of the proposed GMZ.

RESPONSE:

INTERROGATORY NO. 17: Identify each GMZ proposed but not established under 35 Ill. Adm. Code § 740.530 by stating for each such proposed GMZ the identity of the owner and/or operator of the site at which the proposed GMZ is located, the circumstances that exist at that site, the date upon which the State denied the establishment of a GMZ, a description of all information required by the State as a condition of establishing a GMZ, and a description of the proposed GMZ.

RESPONSE:

INTERROGATORY NO. 18 Identify each document that consists of or contains information regarding communication between any member of the Governor's staff and either IEPA or OMM regarding any actual or potential contamination of the District's production wells either actually or potentially relating in any way to PCC's disposal of coal mining refuse at the Mine.

RESPONSE:

Date: July 14, 2003

PEABODY COAL COMPANY

By its attorneys

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EXHIBIT D

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-134
	)	
PEABODY COAL COMPANY, a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

PEABODY'S AMENDED SIXTH SET OF INTERROGATORIES TO THE STATE

Respondent, Peabody Coal Company, through its undersigned attorneys, hereby directs the following interrogatories to Complainant, People of the State of Illinois, to be answered within twenty-eight (28) days of the receipt hereof.

INSTRUCTIONS

1. Unless stated otherwise, provide the information sought by each Interrogatory with respect to the time period January 1, 1965 to present.

2. If your answers to these Interrogatories are supported by (or if an Interrogatory inquires as to the existence of) a record of any type, e.g., documents, photographs, notes, memos, statements, investigative journals, complaints, test results, etc., please attach a copy of the same to your answers identifying which answer each record supports.

3. These Interrogatories shall be deemed continuing so as to require supplemental answers if you obtain further or supplemental information between the time answers to the within Interrogatories are served and the time of hearing. If for any reason you are unable to

answer any Interrogatory in full, such Interrogatory should be answered to the extent possible and the reason for the inability to answer in full should be clearly stated.

4. Verification under oath of all interrogatory responses is required.

5. With respect to information which is withheld or not disclosed as requested pursuant to these interrogatories due to a claim of privilege of non-disclosure, a statement shall be provided by counsel setting forth as to each such withholding or non-disclosure:

a. a brief description of the nature and subject matter of and the reason for withholding or non-disclosure of the information;

b. the statute, rule, decision or other basis which is claimed to give rise to the privilege or any other justification for the non-disclosure or withholding of the requested information.

6. If you exercise your option under Illinois Supreme Court Rule 213(e) to produce certain of your business records as your "answer" to an interrogatory set forth below, documents submitted in response to that request should be produced as they are kept in the usual course of your business or organized and labeled according to the individual categories of the interrogatory to which the documents respond. If you choose the latter method, (i) within each group, the documents should be arranged, to the extent possible, in chronological order, and (ii) if any document is responsive to more than one category, you may provide a single copy indicating the categories to which it is responsive, in lieu of providing multiple copies.

7. It is not PCC's intention by these interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no

objection on those grounds is necessary. However, if you contend that any documents you possess that contain information responsive to these interrogatories as a matter of substance are privileged, then prepare a privilege log containing the following information:

a. the name of the author(s) of the document and the employer of such author(s);

b. the name of each recipient of the document, including all persons to whom a copy was sent and persons with knowledge of the contents of the document, and each recipient's employer;

c. the name of each person who participate in the preparation of the document;

d. the nature or subject matter of the document;

e. the date on which the document was first created and the date the document bears, if different; and

f. the specific basis for the privilege claimed with respect to the document, including but not limited to all facts relied upon in support of the claim or privilege, and the identity of all persons having knowledge of any facts related to the claim of privilege.

8. It is not PCC's intention by these interrogatories to seek information that has previously been provided by the State in its responses to interrogatories previously directed to it by PCC. Therefore, all of the interrogatories below should be construed as consistent with that intention, even if an interrogatory by its terms could be construed to seek to elicit such information, so that no objection on those grounds is necessary. However, if you contend that any information sought by any interrogatory below has been previously provided to PCC in

response to an interrogatory previously directed to the State, identify the interrogatory response by which that information was previously provided to PCC.

DEFINITIONS

As used herein, the words and phrases set out below shall have the meaning or meanings as follows:

1. "Another Mine" means a coal mine in Illinois other than the Mine.

2. "Board" means the Illinois Pollution Control Board.

3. "Another Operator" means an operator of a coal mine in Illinois other than PCC.

4. "Chemical of concern" means chloride, iron, manganese, sulfate, or TDS.

5. "Coal mining" or "Mining of coal" means the excavation and extraction of natural underground coal deposits by the use of any mechanical operation.

6. "Coal mining refuse" means gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and other unmerchantable solid or slurry material intended to be discarded which is connected with the cleaning and preparation of mined materials at a preparation plant or washery.

7. "Document" means each writing and record of every type and description in the possession, control, under contract with or by, or in the custody of the State, including, but not limited to, correspondence, memoranda, stenographic or handwritten notes, reports, manifests, bills of lading, contracts, studies, books, pamphlets, retrievable electronic data, laboratory analyses, picture or voice recordings, and shall mean a copy where the original is not in control of the State. The term "document" means and includes each and every medium upon which information can be printed, or reproduced in any manner by mechanical means, by hand or otherwise, that is or has been in your possession, custody or control or which will lead to the

discovery of the whereabouts of a responsive document, including logs, e-mail records, publications, photographs, recordings of every kind or records, transcripts, cover sheets, transmittal records of meetings, conferences, telephone or other communications, diagrams, charts, computer printouts, pictures, magazines, texts, video or audio tapes, drawings, summaries of telephone conversations, summaries or reports of investigations or negotiations, and sketches, every copy of such writing or record where the original is not in your possession, custody or control, and every copy of such writing or record where such copy contains any commentary or notations whatsoever that do not appear in the original, and drafts of any of the foregoing.

8. "Enforcement Action" means any process initiated either by IEPA or the Attorney General against any person in which that person was alleged to have violated any provision of the Act or the GPA and in which IEPA or the Attorney General at any time sought the imposition against that person of some sanction authorized by the Act or the GPA.

9. "Groundwater" means any groundwater as that term is defined in 415 ILCS 55/3(g).

10. "Identification" or "identify" means:

a. As to an individual, stating his or her:

i. Full and customarily used name or names;

ii. Present business or residential address; and

iii. Every title, office, position, or other relationship held with the State, both currently and during the relevant time period.

b. As to any "person" other than an individual, stating:

i. Its legal name and any other names used by it;

ii. The form or manner of its organization (e.g., partnership, corporation, etc.); and

iii. The State of its incorporation (if it is incorporated) and the address of its principal place of business and identity of its Registered Agent.

c. As to a document, stating:

i. the date of its creation;

ii. its author or signatory;

iii. its addressee and any other recipient;

iv. its type or nature (e.g., letter, memorandum, etc.), including its subject matter (which shall be stated with particularity);

v. the identity and business or home address of the custodian; and

vi. the present location of the document.

11. "IDNR" means the Illinois Department of Natural Resources and/or its predecessor agency.

12. "IEPA" means the Illinois Environmental Protection Agency and/or its predecessor agency.

13. "In the possession of" means in the physical possession of, or under or subject to the control of or available to as to matter of right, the person or body named or any person or body subject to the control or direction of such person or body in regard to the record or item named.

14. "Liner" means a continuous layer of natural earthen materials or synthetic geo-membrane materials beneath or on the sides of a coal mining refuse disposal area that restrict or restricts the downward or lateral escape of the coal mining refuse and its contaminants to the groundwater on-site and off-site of the disposal area.

15. "Mine" means PCC's Eagle No. 2 Mine, an underground coal mine, including the surface area thereof, located approximately one mile northwest of Shawneetown, Illinois in Gallatin County, Illinois.

16. "Off-site" means areas near a mine but not on or within the property boundaries of the Mine.

17. "OMM" means the Office of Mines and Minerals of the IDNR and/or its predecessor agency.

18. "On-site" means on a mine property or within the property boundaries of a mine.

19. "PCC" means Peabody Coal Company, its divisions, subsidiaries, related companies or corporations, predecessors, successors, and all present and former officers, directors, agents, attorneys, employees and all other persons acting or purporting to act on behalf of them.

20. "Person" means any person as that term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (1998).

21. "Predecessor agency" means any agency or subdivision of the State of Illinois that at some point in time prior to the creation of an existing State Agency had substantially the same responsibilities as the existing State Agency, specifically including responsibility for the matter that is the subject of a request set forth below.

22. "Refuse disposal area" means any land used for dumping, storage or disposal of coal refuse which is intended to serve as permanent disposal of such material.

23. "Related to" or "relating to" means directly or indirectly, mentioning or describing, consisting of, pertaining to, being connected with, reflecting upon, or having any logical or factual connection with a stated matter.

24. "Relied upon" means being or having been depended upon or referred to in relation to the matter at issue.

25. "State Agency" means any state agency as that term is defined in 30 ILCS 5/1-7.

26. "TDS" means total dissolved solids.

27. "The State" means Complainant, People of the State of Illinois, in the context of references to parties to this case. In all other contexts, "the State" has the same meaning as the word "you" as defined immediately below.

28. "You" means the State of Illinois, its agencies, and their respective officers, agents, employees, representatives, or any other person or persons acting for, or purportedly acting on behalf of or in concert with them, individually and collectively; and "your" means the possessive of "you."

CONSTRUCTION

1. In construing these requests:

   a. The singular shall include the plural and the plural shall include the singular;

   b. A masculine, feminine or neutral pronoun shall not exclude the other genders;

   c. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as "and/or" or as otherwise necessary in order to bring within the scope of the Interrogatory all responses which might otherwise be construed to be outside its scope.

2. It is not PCC's intention by these Interrogatories to seek information that is protected by the attorney-client privilege or by the work product doctrine. Therefore, all of the

Interrogatories below should be construed consistent with that intention, even if an Interrogatory by its terms could be construed to seek to elicit such information, so that no objection on that basis is required.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, occupation, title and business address of the person or persons providing information in response to these interrogatories, including all individuals responding on behalf of any person who is not an individual, and indicate which person or person answered each interrogatory.

RESPONSE:

INTERROGATORY NO. 2: Has the State made any effort to determine the truthfulness, competency, reliability or accuracy of fact, date, formula, assumption, analysis, oculation, inference, conclusion, expert opinion, prediction or other information set contained within the following documents?

(1) Site Characterization Report and Corrective Action Plan, Peabody Coal Company, Eagle No. 2 Mine Site, Shawneetown, Gallatin County, Illinois. Prepared by GeoSyntec Consultants, 1100 Lake Hearn Drive, Atlanta, GA 30342. Project No. GE3665-08, November 1995.

(2) Eagle No. 2 Mine Sulfates Transport Analyses, Prepared by Jim Rumbaugh/ESI, January 12, 2001.

(3) Geophysical Investigation, Map of the Extent of the Contamination Plume on the Aquifer formed by the Henry Formation, Located at Peabody Coal Company's

Eagle #2 Mine, Shawneetown, Gallatin County, Illinois, April 1993. Prepared by GECOH Exploration, 5480 Shanton Drive, Lexington, Kentucky 40509. Prepared for: Peabody Coal Company, Coal Services Corporation, 1951 Barrett Court, Henderson, Kentucky 42420.

(4) A groundwater computer model used to assess the impact of Peabody's Eagle #2 operation upon the Saline Valley water supply wells (the Random Walk model). Prepared by Peabody Coal or a consultant. Submitted by an attachment to a letter dated March 20, 1985 from Larry S. Reuss of Peabody Coal Company to Allen Oertel of the Illinois Department of Mines and Minerals. Mr. Reuss' letter was in response to Mr. Oertel's letter of July 10, 1984, requesting modifications to the Eagle #2 Permanent Program Application #34.

If your answer is in the affirmative, identify each person who has undertaken any such effort on behalf of the State; describe each such effort; state every such determination made by the State and the bases for each such determination; and identify each document considered, relied upon, or prepared in connection with or relating to each such determination.

RESPONSE:

INTERROGATORY NO. 3: State whether the State disputes the truthfulness, competency, reliability or accuracy of fact, date, formula, assumption, analysis, calculation, inference, conclusion, expert opinion, prediction or other information set contained within the document(s) listed in the immediately preceding Interrogatory.

If your answer is in the affirmative, identify each item disputed, describe the nature of the dispute, and state with particular specificity the facts and/or reasons upon which the dispute is based.

Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response, and please identify all documents in your possession and control that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 4: State whether the State has or knows of any communication or document which amends, revises, supplements, or updates any of the facts, data formulas, assumptions, analyses, calculations, inferences, conclusions, expert opinions, predictions or other information set forth in the document(s) listed in the preceding Interrogatory 2. If your answer is in the affirmative, identify each such document or communication.

RESPONSE:

INTERROGATORY NO. 5: State whether the State disputes the accuracy, competency, reliability or truthfulness of any sample collection, analysis, sample result,

calculation, inference, conclusion, expert opinion, prediction, or other information set forth in any of the information provided by PCC to OMM and/or IEPA regarding water quality at or near the Mine.

Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents in your possession and control that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 6: Has the State conducted any testing, sampling, modeling, data collection of any kind and analysis with regard to the determination of the area of groundwater for which the hydrologic balance has been disturbed by, from or due to the construction, development and operation of each or all activities related to the Mine? If your answer is in the affirmative, provide all information not previously provided that is available as a result of these efforts. Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents not previously produced that contain information responsive to this Interrogatory.

RESPONSE:

INTERROGATORY NO. 7: In the course of its research and analysis of groundwater contamination at the Mine, has the State determined, or done any work toward determining, what would be required to achieve sulfate concentration levels equal to or less than

400 mg/l at the mine property boundaries and in what time frame such levels might be achieved. If so, provide these determinations to the extent not previously provided. Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents in your possession and control not previously produced that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 8 For every coal mining refuse disposal area constructed at or proposed for construction at Another Mine as to which OMM authorized such construction by means of an operating permit or permit amendment or revision, state with factual specificity:

a. all names utilized for the refuse disposal area, its size (number of acres) and its location at the mine;

b. the date that the refuse disposal area was constructed;

c. whether OMM recognized the potential for contamination of groundwater from the construction and operation of the refuse disposal area;

d. whether a pre-design exploration program was carried out at the mine to determine the anticipated infiltration losses from the refuse disposal area into the groundwater beneath the refuse disposal area;

e. how many different material types were identified within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area;

f. each type of material identified within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area;

g. for each material type identified in your response to subpart (f.) of this Interrogatory within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area, how thick the material is and the amount of area the material covers;

h. whether the hydraulic conductivity was determined for each material type identified within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area;

i. the hydraulic conductivity value determined and identify the method used to determine the value for each material type identified within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area;

j. whether OMM considered the hydraulic conductivity values provided in your response to subpart (i.) of this Interrogatory to be representative of the entire thickness of the material that was present or were other characteristics of the material considered which would increase the soil's hydraulic conductivity (i.e., microfractures in the soil, plant roots, weathering);

k. within the interior of the refuse disposal area at and below the design elevation of the bottom of the refuse disposal area, how many separate

areas for which infiltration rates were determined, how each such area is described, and the infiltration rate determined for each area;

l. the infiltration rate determined and the method used to determine the value for each area where an infiltration rate noted in your response to subpart (k.) of this Interrogatory was determined;

m. whether, and if so, where, OMM considered requiring the operator to place a low permeability liner or considered some other means of decreasing infiltration through the bottom of the refuse disposal area into the groundwater;

n. a description of any low permeability liners or other means of decreasing infiltration through the bottom of the refuse disposal area into the groundwater which were considered by OMM, and the actual or estimated cost of such liners or other means of decreasing infiltration;

o. the design rate in gallons per day for the water in the refuse disposal area infiltrating into the groundwater;

p. the date or dates that IEPA considered or considers that the refuse disposal area was or has been in use for the disposal of coarse coal mine waste, coal refuse and/or slurry, and the date or dates that it was not in use for the disposal. For purposes of this Interrogatory, the term "in use" means, the date or dates that each refuse disposal area received course coal mine waste, coal refuse and/or slurry for disposal; and

q. the date or dates that the refuse disposal area was or has been in use for carbon recovery.

Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response, and please identify all documents in your possession and control that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 9: Identify each coal mine in Illinois at which a pre-designed exploration program was or is being carried out at the mine to determine the anticipating infiltration losses from a coal mining refuse disposal area into the groundwater beneath that area.

RESPONSE:

INTERROGATORY NO. 10: Identify each coal mine in Illinois at which the operator identified how many different material types exist within the interior of a coal mining refuse disposal area at or below the design elevation of the bottom of that area, the thickness of each such material, the amount of area covered by the material, the hydraulic conductivity for each such material and whether such hydraulic conductivity values are representative of the entire thickness of the material or whether instead other characteristics of the material would increase the soil's hydraulic conductivity.

RESPONSE:

INTERROGATORY NO. 11: Identify each coal mine in Illinois not previously identified at which OMM has required the operator to install a liner in a coal mining refuse disposal area as a condition of use of that area for that purpose.

RESPONSE:

INTERROGATORY NO. 12: Identify each coal mine in Illinois not previously identified at which the operator has installed a liner in a coal mining refuse disposal area prior to use of that area for that purpose.

RESPONSE:

INTERROGATORY NO. 13: To the extent you have not previously done so, describe in detail all measures that have been implemented at coal mines in Illinois other than the Mine to prevent chemicals of concern from being released from the refuse disposal areas at the mine to the surface waters and to the groundwater on-site and off-site of the mine, and the cost of each measure. To the extent you have not previously done so, describe in detail each feature at each such mine that has been installed that is designed or intended to control the release of inorganic chemical constituents from the refuse disposal areas at the mine to the surface waters and to the groundwater on-site and off-site of the mine and state the date or dates each feature was

constructed, installed, or placed into service, and the cost of each such feature. Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 14 To the extent you have not previously done so, describe in detail all measures known to OMM or IEPA that Another Operator ever considered or proposed for the purpose of preventing inorganic chemical constituents from the refuse disposal areas at Another Mine from being released to the surface waters and to the groundwater on-site and off-site of the mine but did not implement; and state the cost of each such measure and the reason the measure was not implemented. To the extent you have not previously done so, describe in detail each feature known to OMM or IEPA that was considered or proposed by Another Operator to control the release of inorganic chemical constituents from the refuse disposal areas at Another Mine to the surface waters and to the groundwater on-site and off-site of the mine but not installed, constructed or implemented, and state the date or dates each such feature was under consideration, and please also indicate the cost of each such feature and the reason each such feature was not installed, constructed or implemented. Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents that contain information responsive to this interrogatory.

RESPONSE:

INTERROGATORY NO. 15: Have all groundwater quality analyses performed on water samples taken after January 1, 1996, by all operators other than PCC of coal mines located in Illinois or a laboratory responsible for completing the State's water quality analysis, been conducted according to the methodology in "Standard Methods for the Examination of Water and Waste Water" 15th Edition (1980)?

Specifically identify all facts, circumstances, documents, or other evidence on which you rely in support of your response; and identify all documents in your possession and control that contain information responsive to this interrogatory.

RESPONSE:

Date: July 14, 2003

PEABODY COAL COMPANY

By its attorneys

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EXHIBIT E

ISSUES ADDRESSED BY INTERROGATORIES

Issues Addressed

Third Set of Interrogatories

1	Standard
2 – 4	Standard
5	Standard
6	Basic
7 – 13	Whether Counts II and III have been brought by the AG on his/her own behalf, as alleged by the State

Fourth Set of Interrogatories

1	Standard
2 - 8	Seriousness of alleged violations
9 – 14	Impact on the aquifer
15 - 20	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations; appropriate penalty
21 - 29	Whether "water pollution" or "water pollution hazard" has occurred; seriousness of alleged violations; appropriate penalty
30	Seriousness of alleged violations

Fifth Set of Interrogatories

1	Standard
2 – 11	Appropriate penalty
12 – 13	Appropriate penalty
14 - 15	Appropriate penalty
16 – 17	Appropriate penalty; will limit to info regarding GMZs
18	Whether "water pollution" or "water pollution hazard" has occurred; Seriousness of alleged violations; appropriate penalty

Sixth Set of Interrogatories

1	Standard
2 – 15	Same (and all) issues as to which the information sought has been deemed relevant by the State by its corresponding interrogatories

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JUL 17 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 99-134
PEABODY COAL COMPANY, a Delaware corporation, Respondent.	)	

AFFIDAVIT OF STEPHEN F. HEDINGER RELATING TO PCC'S MOTION FOR LEAVE TO SERVE INTERROGATORIES

Stephen F. Hedinger, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.

2. I am an attorney duly licensed to practice law in the State of Illinois; and I am one of the attorneys of record for Respondent, Peabody Coal Company ("PCC") in connection with the above-captioned matter.

3. This affidavit is being filed with the Board in support of PCC's Motion For Leave To Serve Interrogatories, filed in this matter herewith.

4. Early in this litigation, to the best of my recollection late summer or early fall of 1999, counsel for the State, Jane E. McBride, and I engaged in an initial conference to discuss discovery in this case. During that conference, among other things we discussed interrogatories, and specifically whether any limitations should be placed upon the number of interrogatories one party could serve upon the other party. Ms. McBride requested, and I agreed, that the parties

mutually agree to forgo limits upon interrogatories, at least until one side or the other determined that it had a basis to request such a limitation.

5. Following the agreement discussed in paragraph 4 above, both parties served interrogatories without further discussion of any limitations upon the number which could be served. The first objection I heard from the State to the number of interrogatories served by PCC was Complainant's Motion For Protective Order. At no time has any representative of the State, including Ms. McBride, requested the imposition of any interrogatory limitation in this case, other than by that Motion.

Further affiant sayeth not.

Stephen F. Hedinger

STATE OF ILLINOIS)
) ss.
COUNTY OF SANGAMON)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 14th day of July, 2003.

Notary Public

My Commission Expires:
9-13-2006

OFFICIAL SEAL
ERIN N. WYSS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-13-2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 99-134
PEABODY COAL COMPANY, a Delaware Corporation, Respondent.	)	

AFFIDAVIT OF W. C. BLANTON RELATING TO PCC'S MOTION FOR LEAVE TO SERVE INTERROGATORIES

W. C. Blanton, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.

2. I am an attorney duly authorized to practice law in the States of Indiana, Missouri, and Minnesota; and I am one of the attorneys of record for Respondent, Peabody Coal Company ("PCC"), in connection with the above-captioned matter, having been granted leave by the Illinois Pollution Control Board ("Board") to appear pro hac vice in this matter on behalf of PCC.

3. This affidavit is being filed with the Board in support of PCC's Motion For Leave To Serve Interrogatories, filed in this matter herewith.

4. Sometime relatively soon after the State served Complainant's Second Set Of Interrogatories upon PCC, I had a telephone conversation with Jane E. McBride, the State's attorney of record in this case, regarding PCC's questions and objections to the interrogatories contained in that document. In the course of our conversation, Ms. McBride and I discussed the

fact that the State had directed substantially more than 30 interrogatories to PCC without obtaining leave from the Hearing Officer to do so. The substance of our conversation with respect to this subject was (1) we agreed that this case was of such a nature and magnitude that the 30-interrogatory limit established by 35 Ill. Adm. Code 101.620(a) and Illinois Supreme Court Rule 213(c) was not realistic and workable, and (2) we agreed that the parties therefore would waive any objection to interrogatories based upon the "30-interrogatory limit" rule and would instead address interrogatories directed to them on their merits.

Further affiant sayeth not.

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 14th day of July, 2003.

GERALDINE F. HALL
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: November 12, 2004

Notary Public

My Commission Expires:

11-12-04