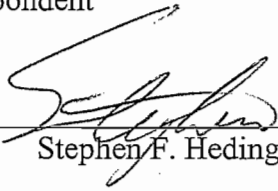


MOTION TO STRIKE THE STATE'S IRRELEVANT EVIDENTIARY SUBMISSIONS copies
of which are attached hereto and herewith served upon you.

Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC,
Respondent

By: 
Stephen F. Hedinger

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 99-134
)	
HERITAGE COAL COMPANY LLC,)	
)	
Respondent.)	

**RESPONDENT HERITAGE COAL COMPANY LLC'S NOTICE OF FILING
DEPOSITION TESTIMONY IN SUPPORT OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT**

In support of its pending motion for partial summary judgment and in reply to the State's opposition to that motion, Respondent, Heritage Coal Company LLC, hereby files with the Board a copy of the transcript of the deposition testimony of Richard P. Cobb taken on March 2, 2000 in the civil action encaptioned Saline Valley Conservancy District v. Peabody Coal Co., Case No. 98-4074-JLK in the United States District Court for the Central District of Illinois, at page 33, line 12 through page 40, line 11; page 110, line 7 through page 113, line 23; and page 116, line 13 through page 117, line 10.

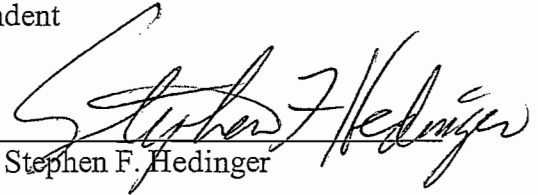
Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC,
Respondent

By: _____

Stephen F. Hedinger



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ATTORNEYS FOR RESPONDENT

Page 1

1 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

2

3 SALINE VALLEY CONSERVANCY DISTRICT,
an Illinois District Established
4 Under the Statutes of the
State of Illinois,

5
6 Plaintiff,

7 vs. No. 99-4074-JLF

8 PEABODY COAL COMPANY,
9
10 Defendant.

11

12 THE DEPOSITION of RICK COBB, taken

13 in the above-entitled case before Dawn Nottingham,

14 a Notary Public of Sangamon County, acting within

15 and for the County of Sangamon, State of Illinois,

16 at 11:35 A.M., on March 2, 2000, at 1021 North

17 Grand Avenue East, Springfield, Sangamon County,

18 Illinois, pursuant to notice.

19

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21

22

23 BALDWIN REPORTING & LEGAL-VISUAL SERVICES
Serving Illinois, Indiana & Missouri
24hrs (217) 788-2835 Fax (217) 788-2838
1-800-248-2835

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I N D E X

2	DEPONENT	PAGE NUMBER
3	Rick Cobb	
4	Examination by Mr. Blanton	5, 149
5	Examination by Mr. Ernest	133
6		
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8		
9		
10	E X H I B I T S	
11	NUMBER	MARKED FOR IDENTIFICATION
12	Exhibit Number 711	9
13	Exhibit Number 712	29
14	Exhibit Number 713	31
15	Exhibit Number 714	40
16	Exhibit Number 715	68
17	Exhibit Number 716	101
18	Exhibit Number 717	105
19	Exhibit Number 718	106
20	Exhibit Number 719	109
21	Exhibit Number 720	109
22	Exhibit Number 721	139
23	Exhibit Number 722	141
24	Exhibit Number 723	143
25	Exhibit Number 724	143
26	Exhibit Number 725	144
27	Exhibit Number 726	145
28	Exhibit Number 727	146
29	Exhibit Number 728	146
30	Exhibit Number 729	147
31	Exhibit Number 730	148
32		
33	(Whereupon all exhibits were retained by counsel.)	
34		

Page 2

1 APPEARANCES:

2 RHINE, ERNEST & VARGO
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3 631 Market Street
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4 On behalf of Plaintiff.

5 OPPENHEIMER, WOLFF & DONNELLY, LLP
BY: W. C. Blanton, Esq.
6 Plaza VII, Suite 3300
45 South Seventh Street
7 Minneapolis, Minnesota 55402
On behalf of Defendant.

8

9

10

11

12

13

14 ALSO PRESENT:

15 Mr. Stephen C. Ewart, Deputy Counsel
Illinois Environmental Protection Agency
16 1021 North Grand Avenue East
Springfield, Illinois 62794

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20

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Page 4

S T I P U L A T I O N

2 It is stipulated and agreed, by and between
3 the parties hereto, through their attorneys, that
4 the deposition of RICK COBB, may be taken for
5 deposition purposes before Dawn Nottingham, a
6 Notary Public and Certified Shorthand Reporter,
upon oral interrogatories, on the 2nd of March,
7 A.D. 2000, at the instance of the Defendant, at the
8 hour of 11:35 A.M., at 1021 North Grand Avenue
East, Springfield, Sangamon County, Illinois;

9 That the oral interrogatories and the
10 answers of the witness may be taken down in
11 shorthand by the Reporter and afterwards
12 transcribed;

13 That all requirements of the Federal Rules
14 of Civil Procedure and the Rules of the Supreme
15 Court as to *dedimus*, are expressly waived;

16 That any objections as to competency,
17 materiality or relevancy are hereby reserved, but
18 any objection as to the form of question is waived
19 unless specifically noted;

20 That the deposition, or any parts thereof
21 may be used for any purpose for which depositions
22 are competent, by any of the parties hereto,
23 without foundation proof;

24 That any party hereto may be furnished
copies of the deposition at his or her own expense.

COPY

12 Q Other persons employed by the Agency
 13 have told us that the standards for chlorides,
 14 sulfates, total dissolved solids, and iron were
 15 established by looking at groundwater quality data
 16 obtained as a result of a program carried out in
 17 the mid to late 1980s essentially ranking the water
 18 quality data for all of the Public Water Supplies
 19 in the state that participated in that study and
 20 drawing a line at the 95 percentile and then moving
 21 to the closest round regulatory looking number; is
 22 that right?
 23 A That's correct. And that's something
 24 that we did with the United States Geological

1 substances on the final list and why they rejected
 2 others?
 3 A There would certainly be minutes and
 4 notes from those meetings and summaries. It's been
 5 awhile since I looked at that as to how specific
 6 those minutes were, but we did discuss each of the
 7 different chemicals and then that was the basis
 8 then for describing ultimately what we had in the
 9 draft. And the testimony that went into the Board
 10 was ultimately what we chose. So, I assume
 11 backtracking we had some discussion on that in that
 12 meeting.
 13 Q Who was in charge of that
 14 particular--in the big picture narrow process of
 15 cutting down the candidate list to the substances
 16 that actually appear in 620.410?
 17 A Well, at that time the groundwater
 18 section manager was Robert Clarke.
 19 Q He was sort the chairman of that
 20 process?
 21 A He was the chairman of that group.
 22 Q Then tell me how it was once you had
 23 the list, and I say you generically, I'm not trying
 24 to keep track of where were you in this, I'm just

1 Survey. They took the data and did the statistical
 2 breakdowns so that we found essentially there were
 3 2400 samples that were taken and relative to each
 4 of those constituents there was a breakdown of the
 5 statistics and we found, the USGS did, did the
 6 statistics on the concentration, that would be
 7 where it would be 95 percent of the time at or
 8 below that number.
 9 Q Mr. Dunway testified that he had the
 10 responsibility for doing the list, figuring out the
 11 list of candidates for substances to appear in this
 12 regulation and he provided the list of substances
 13 and the documentation of why he was putting that
 14 substance on his list to you, is that so?
 15 A Yes.
 16 Q What did you do with the list of
 17 candidates after he gave it to you?
 18 A That's something then that the
 19 groundwater standards technical team used as a
 20 basis for here is the candidate list. Ultimately
 21 from that and those discussions is how the
 22 standards were developed.
 23 Q In the four boxes of materials is there
 24 documentation by that group of why they put certain

1 hoping you know about it. When you cut the list of
 2 candidates down to the list for which there was
 3 going to be a number who was in charge of picking
 4 the number for what the standard would be?
 5 A Ultimately that was probably Bob Clarke
 6 was responsible for ultimately deciding on the
 7 number. Now, working for him in a technical manner
 8 we would have given our recommendation as well as
 9 through this technical team we've got-- I'm sure
 10 that we had captured a lot of input as to
 11 directions to go.
 12 Q Is Mr. Clarke still employed by the
 13 Agency?
 14 A No, he is not.
 15 Q Do you know where he is?
 16 A He works for a consulting firm in St.
 17 Louis and I believe that the name of the firm is
 18 Earth Tech. I'm not precisely sure, but it's a
 19 private consulting firm.
 20 Q What's his full name?
 21 A Robert P. Clarke.
 22 Q How do you spell Clarke?
 23 A C-l-a-r-k-e.
 24 Q Were you involved in the decision to

1 establish the number, the standard, for the
2 five--the four constituents that I specifically
3 identified in the manner that you have confirmed
4 was done?

5 A Yes.

6 Q What was the rationale for using that
7 process of basically saying the standard will be
8 what 95 percent of the water is or better?

9 A Well, one of the mandates of the
10 Illinois Groundwater Protection Act and section
11 eight of the Illinois Groundwater Protection Act
12 one of the things that we were required to consider
13 were compounds that were commonly detected in
14 Illinois groundwater. So, that was the rationale
15 for--one of the rationales for doing that because
16 then that shows the detections of those chemicals.

17 Q I understand how that would make those
18 four substances on the list, but I don't understand
19 why that would mean the standard would be the 95
20 percentile for their occurrence in groundwater?

21 A Well, another factor that we had to
22 consider in this whole process were what were the
23 groundwater standards that were on the books and in
24 place since 1972 for those same constituents. So,

1 at the in situ standard that we felt was
2 appropriate to protect the resource.

3 Q Is there documentation in the four
4 boxes of paper of the consideration of what number
5 would be established as the standard for each of
6 the constituents that appear in 620.410?

7 A Yes, there is. If you go back to the
8 original testimony that was provided, you know,
9 when the proposal was originally filed. As well
10 there is justification even somewhat at the end of
11 R89-14B for certain constituents, none of these
12 that you were speaking about, the four that you
13 were speaking about. In addition, there are
14 exhibits that were attached to the original
15 testimony that contains all of this information
16 that you're asking about, the original list, the
17 statistical analysis from the United States
18 Geological Survey.

19 Q Were you personally involved in the
20 picking of the numbers?

21 A I was part of the team that picked it.

22 Q I mean, you were there when--

23 A Yes.

24 Q (Continuing)--somebody said I move for

1 we would want to compare that 95 percentile to the
2 existing groundwater quality standards that applied
3 in Illinois and that was part of that process as
4 well.

5 The General Use Standards and Subtitle
6 C were the existing groundwater quality standards
7 that applied in Illinois. We wanted to match those
8 levels up with the 95 percentile. Plus in Class I
9 groundwater we wanted to be potable resource so
10 since these were--these samples were drawn from
11 potable wells, major community water supply wells,
12 across the state that logic seemed to be there to
13 use that data.

14 Q Did you make any effort to find out
15 whether the 5 percent of the Public Water Supplies
16 who were apparently distributing water above these
17 standards whether it was okay to their customers or
18 not?

19 A Well, one thing is dealing with an in
20 situ groundwater quality standard versus another
21 matter is related to is there any objectionable
22 color or taste or odor provided through the
23 distribution system. So, we were focusing on
24 looking at that in combination and we were looking

1 395 and somebody said I move for 405?

2 MR. EWART: Objection.

3 MR. BLANTON: You understand what I'm
4 saying?

5 MR. EWART: Yes.

6 THE DEPONENT: Well, this development of
7 this proposal was pretty complex. We spent many
8 weekends, Saturdays, Sundays, bantering back and
9 forth many elements of this proposal. The
10 testimony ultimately that provided the basis would
11 have been the consensus of the group.

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1 water supplies that exceeded the standard, right?
2 A Yes.
3 Q Have you ever made any inquiry to find
4 out what actual levels of any of those contaminants
5 in finished water distributed to Public Water
6 Supply customers in Illinois is?
7 A I'm sure that Dianna Heaberlin may have
8 testified as to what the requirements for those
9 constituents were just prior to the distribution
10 system. What we did was we did well site survey
11 reports at each of those wells.
12 Q My question was whether you've ever--.
13 Is the point of the category one groundwater
14 standards to protect that resource so it can be
15 used as drinking water?
16 A That's correct. For current and future
17 uses.
18 Q Have you ever made any inquiry as to
19 what Public Water Supplies in Illinois currently
20 are distributing as finished water to their
21 customers with respect to any of the four
22 constituents that we've identified and talked
23 about?
24 A Finished water after treatment?

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1 Q Right.
2 A I don't know if I made an inquiry, but
3 I've read the critical status review list every
4 once in a time to see whether there were certain
5 facilities that were violating certain drinking
6 water standards.
7 Q Do you know what the primary maximum
8 contaminant levels for finished water, what that
9 means?
10 A The primary--?
11 Q Yeah, the primary maximum contaminant
12 levels for drinking water.
13 A Well, the United States Environmental
14 Protection Agency has set primary and secondary
15 standards.
16 Q What do you understand those two
17 concepts to be?
18 A Well--.
19 Q What's the significance of something
20 being a primary drinking water standard?
21 A Do it backwards. The secondary
22 standard, usually those contaminants have
23 objectionable taste, color or odor. The primary
24 standards may have probably a health effect of some

1 sort. But I don't-- Well, I'm done.
2 Q Do you know whether--does Illinois have
3 the same sort of classification and regulatory
4 scheme?

5 A We adopt as I understand it through the
6 Pollution Control Board identical on substance
7 regulations for the Safe Drinking Water Act.

8 Q Do you know whether any Public Water
9 Supplies in Illinois is currently distributing
10 finished water that exceeds the secondary
11 standards?

12 A I don't know typically because it's
13 more of a function of the compliance section.

14 Q I take it you've never initiated any
15 inquiry to see whether any of the Public Water
16 Supplies in the state are distributing finished
17 water that exceed secondary standards?

18 A Essentially what we focus on is where
19 we have raw water at the point of compliance with
20 section 620.505 violations is what our focus has
21 been. We have follow-up actions to that. And then
22 if that be the case in certain instances then that
23 may get into looking at what the finished water is.

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13 Q Do you have any idea what the highest
14 levels of sulfates in finished water in Public
15 Water Supplies across the state might be?

16 A Our focus at that time and I don't know
17 if I could quote it now has been raw water, so no.

18 Q I'm just ask whether you know.

19 A No.

20 Q Do you have any idea what the range or
21 maximum levels of total dissolved solids is in
22 Public Water Supplies in the state of Illinois
23 finished water?

24 A Finished water?

has

21. Mr. Cobb, you will have a chance to
 22 review your transcript to make sure your testimony
 23 has been accurately transcribed and to make sure
 24 your testimony is what you wish to be of record in

1 the case and Mr. Ewart will take care of that with
2 the reporter for you.

3 THE DEPONENT: Thanks.

4 FURTHER DEPONENT SAITH NOT.

5 (Whereupon all exhibits
6 were retained by counsel.)

1 STATE OF ILLINOIS } ss
2 COUNTY OF SANGAMON)

3 C E R T I F I C A T E

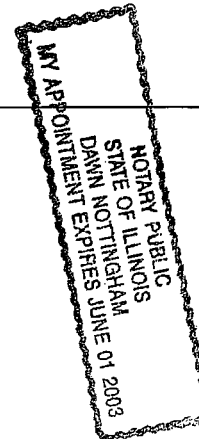
4 I, Dawn Nottingham, a Notary Public and
5 Certified Shorthand Reporter in and for said County
6 and State do hereby certify that the Deponent
7 herein, RICK COBB, prior to the taking of the
8 foregoing deposition, and on the 2nd day of
9 March, A.D. 2000, was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the
11 truth in the cause aforesaid; that the said
12 deposition was on that date taken down in shorthand
13 by me and afterwards transcribed, and that the
14 attached transcript contains a true and accurate
15 translation of my shorthand notes referred to.

16 Given under my hand and seal this 13th
17 day of March, A.D. 2000.

18 *Dawn Nottingham*
19 Notary Public and

20 Certified Shorthand Reporter

21 License No. 084-003563.



1 I, RICK COBB, having read the above
2 and foregoing, find the same to be true and correct
3 with the following additions and/or corrections,
4 if any:

5 Page _____ Line _____ Change:

6
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13
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19
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24 RICK COBB (3-2-00) DATE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 99-134
)	
HERITAGE COAL COMPANY LLC,)	
)	
Respondent.)	

RESPONDENT HERITAGE COAL COMPANY LLC'S NOTICE OF FILING STATE
INTERROGATORY ANSWERS IN SUPPORT OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT

In support of its pending motion for partial summary judgment and in reply to the State's opposition to that motion, Respondent, Heritage Coal Company LLC, hereby files copies of the following answers by the State¹ to certain interrogatories directed to the State by HCC as follows:

- the State's answers to Interrogatories Nos. 14 and 15 contained in Respondent Heritage Coal Company LLC's Fifth Set Of Interrogatories To Complainant, which identify operating permits issued by the State that authorize the operator of a coal mine subject to the provisions of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS Part 720 to dispose of coal mining refuse by placing such material on the ground at the mine or in excavations beneath the surface of the ground at the mine; and

¹ Shortened terms defined in Respondent Heritage Coal Company LLC's Opening Brief In Support Of Motion For Partial Summary Judgment and used here have the meanings ascribed to them in that brief.

- the State's answers to Interrogatories Nos. 21, 22, 23, 24, 25, 26, and 27 contained in Respondent Heritage Coal Company LLC's Fourth Set Of Interrogatories To Complainant, which confirm that the groundwater quality standards for sulfate, chloride, and total dissolved solids allegedly exceeded by the concentrations of those substances in groundwater at specific locations at specific times upon which the State's claims set forth in Count III of its Complaint are based are not "health based" standards.

Dated: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC,
Respondent

By: 

Stephen F. Hedinger

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ATTORNEYS FOR RESPONDENT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 99-134
)	(Enforcement)
)	
HERITAGE COAL COMPANY, LLC,)	
a Delaware corporation,)	
)	
Respondent.)	

ANSWERS TO RESPONDENT HERITAGE'S FIFTH SET
OF INTERROGATORIES TO COMPLAINANT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, in accordance with the Board's Rules, the Illinois Rules of Civil Procedure and the Illinois Supreme Court Rules, and hereby answers Respondent Heritage Coal Company, LLC's Fifth Set of Interrogatories to Complainant as follows:

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.

ANSWER:

Yes, OMM has issued operating permits to Another Operator that authorizes that operator to dispose of coal mining refuse by placing such material on the ground of Another Mine. The following is a list of mines that OMM has identified as having coal mining refuse disposal. OMM was unable to review each permit document related to each mine. Many of the mines have multiple permits and reviewing each permit to determine which individual permits authorized such disposal is burdensome. The list of mines covers all mines where OMM has authorized the operator to dispose of coal mining refuse by placing such material on the ground as well as mines where OMM has authorized the operator to dispose of coal mining refuse in excavations beneath the surface of the ground. As such, the list of mines serves to answer both Interrogatory No. 14 and No.15. Reviewing each permit document to determine if said permit authorized above ground or below ground storage of mining refuse is unduly burdensome.

ENTITY

MINE

Allied Minerals, Inc.	Thunderbird
Alpena Vision Resources, LLC	Murdock
Amox Coal Co.	Sunspot
AMCO-Illinois Mining Co.	Embarass 1
Arch.of IL, Div. of Apogee Coal Co.	Captain
Arch of IL, Div. of Apogee Coal Co.	Denmark
Arch of IL, Div. of Apogee Coal Co.	Horse Creek
Arch of IL, Div. of Apogee Coal Co.	Streamline
Arclar Company, LLCBig Ridge	
Arclar Company, LLCEagle Valley	
Arclar Company, LLCWildcat, CG Pit	
Arclar Company, LLCWillow Lake	
Ayrshire Land Co.	GP No.2
Black Beauty Coal Co.	Riola MC, RP
Black Beauty Coal Co.	Riola MC, VG P
Black Beauty Coal Company	Cedar Creek

Electronic Filing - Received, Clerk's Office, July 12, 2011

Carbon Recovery, Inc.	Norris
Catlin Coal Co., Inc.	# 1
Catlin Coal Co., Inc.	Riola
Christian Coal Company, Inc.	Christian Co.
CIPS	Hillsboro B
Coal Carbon, Inc.	# 1
Coal Carbon, Inc.	# 2
Coal Carbon, Inc.	Slurry 1
Consolidation Coal Co.	Burning Star 2
Consolidation Coal Co.	Burning Star 3
Consolidation Coal Co.	Burning Star 4
Consolidation Coal Co.	Burning Star 5
Consolidation Coal Co.	Hillsboro A
Consolidation Coal Co.	Rend Lake
Consolidation Coal Co.	Wheeler Creek
Co-Rec, Inc.	# 1
Co-Rec, Inc.	Muddy Valley
County of White	White
Davis Enterprises	# 1
Delta Mine Holding Company	Delta
Emrick Trucking, Inc.	# 1
Energy Resources of Il., Inc.	Moffat
Equality Mining Co., Inc.	Equality
Freeman United Coal Company	Industry
Freeman United Coal Mining Co.	Buckheart
Freeman United Coal Mining Co.	Crown II
Freeman United Coal Mining Co.	Crown III
Freeman United Coal Mining Co.	Fidelity
Freeman United Coal Mining Co.	Orient No.3
Freeman United Coal Mining Co.	Orient No.4
Freeman United Coal Mining Co.	Orient No.6
G & G Construction Co.	# 1
Guaranty Resources, Inc.	# 1
Guaranty Resources, Inc.	# 2
Illini Energy Resources, LLC	Razor Back
Illinois & West Virginia Coal	Oakwood
Illinois Fuel Company, LLC	I-1
Illinois Resources, Inc.	Old Ed No. 1
J.J. Track Mining, Inc.	Brown Bros 2
Jader Coal Company, LLC	# 4
Jader Fuel Co., Inc.	# 1
Kearney Fertilizer, Inc.	# 21 F&G Shaft
Kenellis Energies, Inc.	# 1
Knight Hawk Coal, LLC	Creek Paum

Knight Hawk Coal, LLC	Prairie Eagle
Knight Hawk Coal, LLC	Red Hawk
Larry Angelly dba Pitco	# 2
Liberty Coal Company, LLC	Liberty Mine
MDC of Illinois, Inc.	Streamline
Mid-Continental Fuels, Inc.	# 2
Mid-Continental Fuels, Inc.	Ziegler 4
Midland Coal Co., Div. of ASARCO	Elm
Midland Coal Co., Div. of ASARCO	Mecco
Midland Coal Co., Div. of ASARCO	Rapatee
Monterey Coal Co.	# 1
Monterey Coal Co.	# 2
O'Daniel Trucking Co.	# 1
Old Ben Coal Co.	# 11
Old Ben Coal Co.	# 21
Old Ben Coal Co.	# 24
Old Ben Coal Co.	# 26
Old Ben Coal Co.	# 27
Old Ben Coal Co.	# 4
Old Ben Coal Co.	# 5
Old Ben Coal Co.	CCP
Old Ben Coal Co.	JRPP
Old Ben Coal Co.	Spartan
Parks Coal Co.	# 1
Peabody Coal Co.	Eagle No.2
Peabody Coal Co.	Eagle Support
Peabody Coal Co.	Eagle Surface
Peabody Coal Co.	Randolph Prep
Peabody Coal Co.	River King 3
Peabody Coal Co.	River King 6
Peabody Coal Co.	Will Scarlet 14
Peabody Coal Co.	Will Scarlet 15
Phoenix Mining Co., Inc.	Phoenix 1
Processed Energy Corp.	# 1
R & R Resources, Inc.	Coulterville
R & R Resources, Inc.	Old Pyramid
Russell Minerals W. Frankfort, Inc.	# 1
S Coal Company	Cambria #1
S Coal Company	ELKVILLE NO.1
Sahara Coal Co., Inc.	# 21
Southern Illinois Land Reclamation Inc.	# 6
Southern Resource Transfer, Inc.	Old Saxton
Summit Energy Corp.	BZ No 3
Surefire Coal, Inc.	Majestic 14

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Tecumseh Management Co.	# 1
The American Coal Company	Galatia
Turris Coal Co.	Elkhart
U.S. Minerals and Mining, Inc.	# 1
UCO Energy, Inc.	BZ No.2A
USA CoalGas LP	# 10
Utility Coal, Inc.	# 14
Vigo Coal Company, Inc.	Friendsville
Wabash Mine Holding Company	Wabash
Waste Management of Illinois, Inc.	Cottonwood Hill
White County Coal Corp.	# 1
White County Coal, LLC	Pattiki

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.

ANSWER:

See answer to Interrogatory No. 14.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

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Environmental Bureau
Assistant Attorneys General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 7/05/10

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 99-134
)	(Enforcement)
)	
HERITAGE COAL COMPANY, LLC,)	
a Delaware corporation,)	
)	
Respondent.)	

ANSWERS TO RESPONDENT HERITAGE'S FOURTH SET
OF INTERROGATORIES TO COMPLAINANT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, in accordance with the Board's Rules, the Illinois Rules of Civil Procedure and the Illinois Supreme Court Rules, and hereby answers Respondent Heritage Coal Company, LLC's Fourth Set of Interrogatories to Complainant as follows::

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.

ANSWER:

The Part 620 Standards for sulfates are not health based.

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.

ANSWER:

The Part 620 Standards for sulfates are not health based.

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.

ANSWER:

The Part 620 Standards for chlorides are not health based.

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.

ANSWER:

The Part 620 Standards for chlorides are not health based.

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.

ANSWER:

The Part 620 Standards for total dissolved solids are not health based.

INTERROGATORY NO. 26: Identify each document not previously produced that

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contains information regarding the possible adverse health effects of TDS considered by the Board in connection with its promulgation of the Part 620 Standards.

ANSWER:

The Part 620 Standards for total dissolved solids are not health based.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

THOMAS DAVIS
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500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 1/05/10

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 99-134
)	
HERITAGE COAL COMPANY LLC,)	
)	
Respondent.)	

**RESPONDENT HERITAGE COAL COMPANY LLC'S OBJECTIONS TO AND
MOTION TO STRIKE THE STATE'S IRRELEVANT EVIDENTIARY SUBMISSIONS**

Respondent, Heritage Coal Company LLC ("HCC"),¹ hereby objects to and moves this Board to strike from the record in this action the following evidentiary materials filed with the Board as part of the State's response to HCC's motion for partial summary judgment ("HCC's SJ Motion") on or about April 11, 2011:

- The Affidavit Of William E. Buscher ("Buscher Affidavit") dated April 7, 2011, in its entirety, including all Exhibits thereto;
- That portion of Section 3 of the Affidavit Of Richard P. Cobb ("Cobb Affidavit"), dated April 7, 2011 beginning with "these difficulties..." at the end of the eleventh line of the first paragraph on page 2 and continuing through "...an impermeable barrier (i.e. liner)." in the fourth line of the first full paragraph on page 3; Section 8 of that affidavit in its entirety; and the second, third, and fourth paragraphs of Section 10 of that affidavit;

¹ Shortened terms defined in Respondent Heritage Coal Company LLC's Opening Brief In Support Of Motion For Partial Summary Judgment and used here have the meanings ascribed to them in that brief, although for some of the less obvious terms, the definition is repeated herein.

- The Company Memorandum prepared by then HCC employee, K.A. Gastreich, bearing Bates numbers PC00896-PC00897 (the “Gastreich Memorandum”) and the attached Respondent Heritage Coal Company, [sic] LLC’s Response To Complainant’s Request For Admission; and
- The document authenticated by OMM Manager Joseph Angleton on February 11, 2011 (the “IDNR Permit Renewal Review”), a copy of which also appears as Exhibit 1 to the Buscher Affidavit.

None of the State’s evidentiary material to which this motion is directed is relevant to any issue presented or raised by HCC’s SJ Motion, as discussed in detail below.

I. INTRODUCTION AND CONTEXT

This action involves the State’s claims that chemicals of concern (“COCs”), i.e., certain inorganic compounds, have been released into groundwater at HCC’s Mine (an underground coal mine comprised of the underground works and ancillary surface operations, including a preparation plant and the on- and in-ground disposal of gob and slurry (“Mining Refuse”)) as a result of coal extraction and preparation operations and have migrated off-site, thereby violating a number of provisions of the Illinois Environmental Protection Act (the “Act”). Those claims are set forth in the State’s Complaint, which was filed and is being prosecuted at the instance of IEPA. Count III of the Complaint sets forth specific and limited claims based upon the State’s contention that specific concentrations of COCs in groundwater at specific locations at specific times violated specific groundwater quality standards (“GWQS”) that the State contends applied to that groundwater per certain specific regulations implementing the Illinois Groundwater Protection Act (“GPA”), 415 ILCS 55/1 et seq.

The claims pled by the State and the defenses to those claims pled by HCC in response thereto raise a host of factual, legal, and mixed fact and legal issues, the great majority of which are not at issue in HCC's SJ Motion. The State's Count III claims are predicated upon the legal theory that the concentrations of COCs in groundwater at the specific locations at the specific times identified by the State in its Complaint exceeded the GWQS allegedly applicable to that groundwater per the applicable GPA regulations and therefore violated the Act's prohibition at 415 ILCS 5/12(a) against violation of any regulations or standards adopted by the Board under the GPA.

Resolution of the State's Count III claims will require the Board to make a number of findings of fact and conclusions of law. However, the only one of those potentially claim-dispositive determinations that the Board must (or has a basis to) make in connection with its consideration of HCC's SJ Motion is whether the GWQS that the State contends were applicable to the groundwater in question actually as a matter of law applied to that groundwater at those specific locations and times.

For the Board to make this dispositive determination of the issue it must decide a limited number of directly-related legal issues that require the interpretation of certain applicable regulatory provisions and must apply those interpretations to the undisputed facts material to them in accordance with the standards of review of any motion for summary judgment. Specifically, the Board must determine at this time only whether the Disposal Areas are "within an underground coal mine"; whether the Disposal Areas are "within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area"; whether the Disposal Areas are part of a "coal mine"; whether "reclamation" at the Mine was complete at the time of the alleged exceedances; whether the Disposal Areas discharge

leachate to “resource groundwater”; whether the Disposal Areas are “not contained within the area from which overburden has been removed”; when the Disposal Areas were placed into operation; whether the Disposal Areas have been in “continuous operation” since being placed in operation; and whether “additional area” has been added to the Disposal Areas.

It would be inappropriate — and, indeed, legal error — for the Board to address factual or legal issues raised by the parties’ pleadings or in their papers filed in connection with HCC’s SJ Motion but not presented by that motion to this Board for resolution at this time. Nonetheless, in response to HCC’s SJ Motion, the State has treated its response as an opportunity to present arguments and evidentiary materials in support of its broad-brush contentions that COCs released into groundwater at the Mine have caused significant adverse impacts to groundwater quality at and in the vicinity of the Mine; that all such adverse impacts constitute violations of the Act; and that these unlawful adverse impacts resulted from a combination of irresponsible conduct by HCC in carrying out the Mining Refuse disposal activities at issue and the incompetence of the Illinois state agencies that have had the primary responsibility for overseeing those HCC activities, *i.e.*, IEPA’s sister agency, IDNR, and its predecessor, the former IDMM. In support of these broad attacks on HCC and the State’s mining regulatory authorities, the State has filed with the Board certain evidentiary materials that it characterizes as being responsive to factual assertions in HCC’s Opening Brief. However, it requires no close reading or complicated analysis to see that most of the State’s submission has nothing to do with any issue presented by HCC’s SJ Motion.

HCC vigorously disputes the accuracy of the picture that the State has tried to paint with these materials and arguments. However, a detailed rebuttal of the State’s broad attacks is far beyond the scope of HCC’s SJ Motion and must be deferred to later stages in these proceedings

Mr. Buscher is sharply critical of OMM's analysis of the consequences (both past and projected) of HCC's Mining Refuse disposal practices at the Mine as addressed by OMM in September 1996 — some three years after those practices terminated. However, those criticisms are not relevant either to the penultimate legal issue presented by HCC's SJ Motion, i.e. which of the GWQS established by GPA regulations were applicable at the specific locations at the specific times at which the concentrations of COCs that are the subject of the State's Count III claims were determined, or any related issue. In short, whether OMM, Mr. Buscher, or anyone else accurately analyzed or predicted how those concentrations came to be present at those locations at those times is not the question now before the Board. That question is simply, what is the standard against which those concentrations must be compared?²

Mr. Buscher is similarly critical of HCC's Mining Refuse disposal practices. However, again, Mr. Buscher's observations of fact and assertions of opinion have no relevance to the issue of which set of GWQS established by the GPA regulations was applicable to the specific groundwater located at the specific locations at the specific times where the concentrations of COCs at issue in this case were determined.

B. As To The Cobb Affidavit

Most of the Cobb Affidavit consists of Mr. Cobb's recitation of his version of the development of the GPA regulations, with particular emphasis on the provisions relating to coal mining operations and the issues considered by IEPA in developing its proposals for those provisions. However, Mr. Cobb digresses in portions of his affidavit to offer irrelevant

² Furthermore, even if it were to be finally determined that the GWQS the State relies on were applicable at the locations in question at the times in question with respect to COCs released from specific locations at the Mine during a specific applicable time period, there would remain the issues of "source" and "cause" of the "exceedances" of the GWQS alleged by the State to be applicable at those locations, among others.

comments regarding specific operations at the Mine and alleged degradation of the Henry Aquifer.

First, those comments include, in Section 3 of his affidavit, Mr. Cobb's unfounded and inaccurate characterization of the Gastreich Memorandum, which was prepared some 15 years after the Mining Refuse disposal practices at issue began at the Mine. With no basis whatsoever, Mr. Cobb inaccurately characterizes Mr. Gastreich as "Peabody's own in-house expert."³ Furthermore, Mr. Cobb goes on to assert, again with no basis whatsoever, that the Gastreich Memorandum "indicates that, even in 1983, the state of the art design for refuse disposal areas, and impoundments that contain sludge, slurry, and precipitated process material at coal preparation plants located in the recharge zone of a major aquifer above an underground coal mine should include an impermeable barrier (i.e. liner)." Thus, the State takes an opportunity to critique and criticize HCC's conduct — which is not at issue in connection with the Board's consideration of HCC's SJ Motion — by putting before the Board a single short document (out of the tens of thousands of pages of material describing, analyzing, and evaluating HCC operations at the Mine as documented in HCC, IDMM, IDNR, IEPA, and other state agency files) with no context whatsoever, without any exposition of what steps were taken by HCC (either internally or vis-à-vis the appropriate mining regulatory authorities) in response to the Gastreich Memorandum, and — most significantly — with no effort to connect that document to the appropriate interpretation of regulations promulgated by the Board some eight years later.

Second, Section 8 of the Cobb Affidavit consists entirely of Mr. Cobb's observation that IEPA's proposed provisions for the Part 620 regulations were made available to one coal

³ It may (and probably will) be appropriate at some later point in this case for HCC to address the information necessary for developing an informed opinion as to the significance of the Gastreich Memorandum, including what Mr. Gastreich's position at HCC, f/k/a Peabody Coal Company, was at the time; what his responsibilities were in that position; what his qualifications to comment on the subject were; and what the bases of his opinions were — but Mr. Cobb has not supported the State's reliance of that document for any purpose with any such information.

company and the Illinois coal-mining trade association before final adoption by this Board. This material is not cited in the State's Response for any purpose and is not relevant to any issue presented by HCC's SJ Motion.

Finally, with the exception of its first paragraph, Section 10 of the Cobb Affidavit addresses only the means by which Mr. Cobb believes the release of COCs into groundwater at the Disposal Areas may have occurred; Mr. Cobb's opinion as to the significance of (in his view) any such release of COCs and any subsequent migration off-site; and the importance of protecting the aquifer given the "natural circumstances" surrounding it and the supposed difficulty for the Saline Valley Conservancy District to find replacement wells. Again, these are not issues that are germane to the question presented by HCC's SJ Motion, i.e., whether the existence of those COCs at specific locations at specific times in the concentrations determined violate any GWQS applicable to groundwater at those locations at those times. Rather, no issue relating to the significance of those concentrations, either as to their actual impact on groundwater quality or as to precisely how they came to be present at the locations sampled, is before the Board for consideration at this time.

C. As To The Gastreich Memorandum

In the State Response, the State represents that the Gastreich Memorandum contains evidentiary facts for the record that it inaccurately characterizes as being responsive to the arguments presented by HCC in its Opening Brief, including: (a) that no liners were installed beneath the Disposal Areas; (b) that the state of art design for refuse disposal areas and impoundments that contain sludge, slurry, and precipitated process material at coal preparation plants located in the recharge zone of a major aquifer above an underground coal mine should include an impermeable barrier or liner; and (c) that HCC's operation of the Disposal Areas

without installing such barriers or liners shows its “disregard for the affected groundwater.” See State Response at 39.

These “facts” are in no way relevant to the issues raised in HCC’s Opening Brief and, in any case, are inconsistent with the State’s history of issuing operating permits that authorize the disposal of coal mining refuse without requiring the disposal areas for such refuse to install a liner. Rather, the State’s submission of the Gastreich Memorandum as an attachment to the State Response appears to be nothing more than a gratuitous effort to try to present HCC as an irresponsible operator.⁴ Accordingly, HCC has submitted for the Board’s consideration copies of the State’s answers to certain interrogatories directed to it by HCC.⁵ Those answers identify more than 100 operating permits issued by the State that authorize the operator of a coal mine subject to the provisions of the Mining Law to dispose of Mining Refuse by placing such material on the ground at the mine or by placing such material in excavations beneath the surface of the ground at the mine. Furthermore, at the appropriate time and posture of this case, HCC will demonstrate what the State well knows — that in all but a handful of those cases, the permitted on- or in-ground disposal of Mining Refuse was carried out with no liner and that no mine installed a liner until 1993 or so.

D. As To The IDNR Permit Renewal Review

The IDNR Permit Renewal Review also is irrelevant to the issues before this Board, as it does nothing more than discuss the assessment of probable cumulative hydrological impacts and the actual impacts allegedly resulting from operation of the Disposal Areas. The State represents

⁴ In this regard, see note 2 above addressing the State’s wholly unfounded rush to anoint Mr. Gastreich as “Peabody’s own in-house expert” as to “state of the art” design for Mining Refuse disposal areas.

⁵ See Respondent Heritage Coal Company LLC’s Notice Of Filing State Interrogatory Answers In Support Of Its Motion For Partial Summary Judgment, filed herewith.

the document as containing evidence of the “contamination of the Henry Aquifer,” but HCC has never denied the presence of COCs originating at the Mine in off-site groundwater.

Curiously, the State also contends that the IDNR Permit Renewal Review supports the State’s argument that HCC’s operation of the Disposal Areas was not designed to prevent material damage to the hydrologic balance outside the proposed permit area by first stating that IDNR’s assessment of probable cumulative impacts determined that the design would prevent material damage and then arguing that, as a result of legal deficiencies in the State mining rules, IDNR’s determination was “wrong.” See State Response at 12, 29. However, neither IDNR’s determination regarding the probable cumulative impacts from the Mine nor any actual “contamination” resulting from the Mine are dispositive of any issue presented here. Rather, the issue is which set of Part 620 GWQS applied to the groundwater where the concentrations of COCs at issue were detected when they were detected — an issue not addressed by the IDNR review.

III. CONCLUSION

For the reasons stated above, the evidentiary material to which this motion is directed is irrelevant to any issue presented or raised by HCC’s SJ Motion. Therefore, HCC’s motion to strike should be granted; the material in question should be stricken from the record; and both that material and the State’s arguments in the State Response based upon that material should be disregarded by the Board in its consideration of HCC’s SJ Motion.


WHEREFORE, Respondent HCC respectfully requests the Board to grant this motion; to strike the State’s evidentiary material to which this motion is directed from the record in this case; to disregard both that evidentiary material and the arguments in the State’s Response based upon that material; and to grant HCC all further appropriate relief.

Date: July 12, 2011

Respectfully submitted,

HERITAGE COAL COMPANY LLC

By its attorneys:



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

CERTIFICATE OF SERVICE

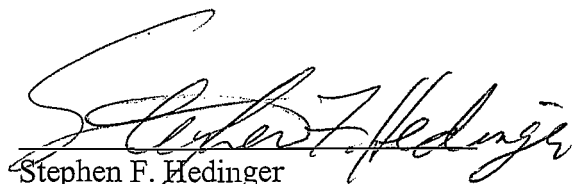
I hereby certify that I did on July 12, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled RESPONDENT HERITAGE COAL COMPANY LLC'S NOTICE OF FILING DEPOSITION TESTIMONY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT, RESPONDENT HERITAGE COAL COMPANY LLC'S NOTICE OF FILING STATE INTERROGATORY ANSWERS IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT, and RESPONDENT HERITAGE COAL COMPANY LLC'S OBJECTIONS TO AND MOTION TO STRIKE THE STATE'S IRRELEVANT EVIDENTIARY SUBMISSIONS and the attached Notice of Electronic Filing, upon the following persons:

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Illinois Pollution Control Board
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